

STATE OF NEW MEXICO  
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD

No. EIB 11-01(R)

IN THE MATTER OF THE PROPOSED REVISIONS  
TO THE STATE IMPLEMENTATION PLAN  
FOR REGIONAL HAZE

TRANSCRIPT OF PROCEEDINGS

BE IT REMEMBERED that on the 2nd day of June, 2011,  
this matter came on for hearing before the Environmental  
Improvement Board, taken at the San Juan College, Room  
7103, 4601 College Boulevard, Farmington, New Mexico, at  
the hour of 9:08 a.m.

VOLUME 2

KATHY TOWNSEND COURT REPORTERS

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1 MS. ORTH: All right. Good morning.

2 My name is Felicia Orth. I'm the Hearing  
3 Officer appointed by the Environmental Improvement Board  
4 to conduct a hearing in the matter of proposed revisions  
5 to the State Implementation Plan for regional haze,  
6 docketed by the Board administrator as EIB 11-01.

7 We're reconvening in this matter this morning.  
8 We had most of the technical testimony yesterday in  
9 Santa Fe and some public comment. We'll hear more  
10 technical testimony today and accept additional public  
11 comment. The Board may choose to deliberate on this  
12 matter at the close of the record, which we expect to be  
13 today.

14 Testimony and comment is taken under oath. It  
15 is subject to cross-examination and questioning,  
16 particularly by the Board.

17 The proceedings today are being recorded and  
18 transcribed by Cheryl Arreguin of Kathy Townsend Court  
19 Reporters. Please contact Ms. Arreguin directly if  
20 you'd like a copy of the transcript. It also becomes a  
21 public record available for review once it's been  
22 received in the office of the administrator.

23 Counsel -- I see Mr. Alvidrez here. We're not  
24 in our usual places.

25 But let me know that you're here,

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1 Mr. Alvidrez.

2 MR. ALVIDREZ: Yes. For the record, Rick  
3 Alvidrez on behalf of Public Service Company of New  
4 Mexico.

5 MS. ORTH: All right. Thank you.

6 Mr. Grantham?

7 MR. GRANTHAM: Bill Grantham with the New  
8 Mexico Environment Department.

9 MS. ORTH: Okay.

10 We have Mr. Rose.

11 MR. ROSE: Yeah. Louis Rose with --  
12 representing M-S-R Public Power Agency.

13 MS. ORTH: Okay.

14 And Mr. Roybal.

15 MR. ROYBAL: Good morning, Madam Hearing  
16 Officer.

17 Charles Roybal for BHP Billiton and San Juan  
18 Coal Company.

19 MS. ORTH: All right. Thank you.

20 And I don't believe Mr. Schlenker-Goodrich was  
21 joining us today.

22 Am I wrong about that?

23 No. All right.

24 As I understand it, counsel, we're going to  
25 begin with technical testimony from San Juan Coal

1 Company.

2 MR. ALVIDREZ: Madam Hearing Officer, at the  
3 pleasure of the Board, I do note that we have some  
4 elected officials here this morning that are interested  
5 in giving public comment. I don't know -- I understand  
6 some of them have some time limitations. I don't know  
7 if you'd like to consider hearing from them as an  
8 initial matter as opposed to beginning the technical  
9 testimony.

10 I just note that for your information.

11 MS. ORTH: Thank you, Mr. Alvidrez.

12 Actually, we often do that. Board -- I'm  
13 happy to do that. The Board is happy to do that.

14 So let's do that first. Let's take some  
15 public comment, particularly from those with time  
16 constraints.

17 Yes. Thank you, sir.

18 MR. SHARER: From here or down there?

19 MS. ORTH: You have a nice loud voice.

20 THE REPORTER: No. Down here.

21 MS. PEACOCK: I guess I'm going to state an  
22 initial comment.

23 The Environmental Improvement Board -- we  
24 wanted to travel here to Farmington so that we could get  
25 comment from everyone here in Farmington. It's

1 important that we show up at meetings in the location  
2 that's affected.

3 And I have to tell you that your riverwalk is  
4 really beautiful. I walked along that last night. I  
5 feel like home.

6 So thank you for coming here for testimony and  
7 comment.

8 WILLIAM SHARER

9 having been first duly sworn or affirmed, was  
10 examined and testified as follows:

11 DIRECT TESTIMONY

12 THE REPORTER: Would you state and spell your  
13 full name, please.

14 MR. SHARER: All right. It's William Sharer,  
15 S-H-A-R-E-R. I'm state senator from District 1, which  
16 is Farmington and a little bit outside the city limits.  
17 Not quite all of the city, but most of the city and a  
18 little bit out of it.

19 I'm here today as Senator Sharer, but also as  
20 a resident of Farmington who was -- I was born in  
21 Albuquerque, but I essentially grew up here in  
22 Farmington.

23 I can remember when you could not see  
24 Shiprock, the actual rock, from Farmington High School  
25 because of the haze. It was a frequent occurrence.

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1           Today if you cannot see Shiprock from the top  
2 of 20th Street outside Farmington High School, it's  
3 because of all of the dust that blew in from Arizona and  
4 California and China. It has nothing to do with the  
5 power plants. The power plants have cleaned up  
6 dramatically over those 30-plus years.

7           Clearly some of the testimony that I've heard  
8 and just the comments that I've heard in the past relate  
9 to the poor quality of the air around here, but when you  
10 compare 1976 with 2011, wow, what a difference. And I'm  
11 one that actually saw it. I'm one that was disgusted by  
12 what I saw in '76. But love living in San Juan County  
13 today, because this is a great place with a great  
14 environment.

15           We all want clean air and clean water,  
16 everybody here, but there's a balance, because we also  
17 want the lights to come on when we flip the switch.  
18 Most of the people in San Juan County, in fact, want a  
19 good job. They don't want government assistance. They  
20 want a vibrant economy where they can work.

21           And the jobs that are produced by the power  
22 plants and the associated coal mines are great jobs.  
23 They're high-paying jobs with great benefits. They're a  
24 great economic engine for not only San Juan County but  
25 the entire State of New Mexico.

1           So where's that balance? We could have  
2 perfectly clean air and clean water and freeze to death  
3 in the dark. I think that's bad planning. Of course,  
4 we could have the most brilliant lights in the world and  
5 not be able to breathe and just choke to death. That's  
6 bad planning, too.

7           There is a balance, and I think that the state  
8 plan achieves that balance. And so I'm here to support  
9 that state plan, not only because it's right for  
10 individual human beings, but it's right for the economy,  
11 it's right for our nation. Energy is what makes modern  
12 life liveable, and if we are willing to shut down  
13 energy, then we're willing to shut down modern life.

14           Look at the machinery that you have right here  
15 to record this. If we decide to turn off the power  
16 plants across the nation, we're going to go back to  
17 quills, which in some cases might be better, because we  
18 produce less paper. But we also have no lights, we have  
19 no electricity for our computers, we have no  
20 communication.

21           In fact, we'll live in caves in very short  
22 order if we continue down this path of clean air, clean  
23 water versus -- it's the only goal and there is no  
24 balance. So let's look for that balance, let's achieve  
25 that balance, let's keep those good jobs, let's keep the

1 economic engine, and still achieve clean air and clean  
2 water. And that's what the current SIP, I think, does.

3 That's the end of mine. I also have a  
4 statement here. Representative James Strickler was  
5 going to come today. He can't. He sent this letter.  
6 And I don't know who to give it to or what to do, but  
7 there you go.

8 I'll give you one of my business cards.

9 And with that, if you have any questions of  
10 me, I'd be glad to answer them.

11 MS. ORTH: Thank you.

12 MS. PEACOCK: Thank you.

13 MS. ORTH: Board questions?

14 MR. VOLKERDING: Thank you.

15 MS. RYAN: Thank you very much.

16 MS. ORTH: Thank you, Senator Sharer.

17 Are there others with time constraints this  
18 morning?

19 Sir.

20 THOMAS C. TAYLOR

21 having been first duly sworn or affirmed, was  
22 examined and testified as follows:

23 DIRECT TESTIMONY

24 THE REPORTER: State and spell your full name  
25 for me, please.

1 MR. TAYLOR: My name is Thomas C. Taylor,  
2 T-H-O-M-A-S T-A-Y-L-O-R.

3 THE REPORTER: Thank you.

4 MR. TAYLOR: I'm a state representative from  
5 this area. I represent portions of the City of  
6 Farmington north to the Colorado border.

7 I've been a resident of Farmington for 63  
8 years. And I certainly have watched what's gone on. I  
9 won't repeat anything that's been said earlier.

10 I think the one comment that I want to make is  
11 that it seems like the process that we have in place for  
12 environmental improvements oftentimes deal with  
13 insignificant issues at all cost. And it's a problem in  
14 an economy especially like we have today. I think it's  
15 important that we concentrate on significant issues,  
16 rather than minimize the amount of money that we have to  
17 spend on those by spending them on insignificant issues.

18 And I say it's insignificant for this reason.  
19 You know, PNM just three or four years ago had  
20 \$320 million worth of improvements to the San Juan  
21 Generating Station. In the area of visibility, they  
22 reduced the NO<sub>x</sub> emissions by 44 percent, SO<sub>2</sub> emissions by  
23 71 percent and particulate by 70-something, as well. A  
24 huge improvement with those items that cause visibility  
25 issues in the area.

1           It's my understanding that the improvements  
2 that are -- that we're facing with this issue today will  
3 not be visible, when we're talking about a visible -- a  
4 visibility requirement. I think that's why I call it  
5 insignificant. If it's going to be significant, then  
6 it's worth spending money on. Otherwise, it is not.

7           It's my contention that we should not do  
8 anything, because PNM has already taken that action by  
9 spending the money and improved the visibility  
10 tremendously in the process that they did and, along  
11 with that, achieved a mercury standard that I don't  
12 think is matched by any other coal-fired plant in the  
13 country.

14           So I think it's important we consider that in  
15 the process of our environmental deeds in this country.  
16 It's important that we make sure we have a clean  
17 environment, but it's also important that we focus our  
18 energies on those things that are the greatest of our  
19 problems in the process of doing that.

20           Thank you.

21           MS. ORTH: Thank you, Representative Taylor.

22           Are there others with time constraints this  
23 morning?

24           UNIDENTIFIED SPEAKER: Good morning, ma'am,  
25 members of the Board.



1 Commissioner Jim Henderson will be arriving.  
2 We pulled him out of a meeting to get here. He will be  
3 under a time constraint. He should be here within the  
4 next few minutes, and I'm not sure if you can  
5 accommodate him.

6 MS. ORTH: Yes.

7 UNIDENTIFIED SPEAKER: Okay. Thank you.

8 MS. ORTH: Is there anyone else with a time  
9 constraint or anyone else who is willing to make a  
10 comment while -- before Commissioner Henderson comes?

11 Please, sir.

12 MR. GONZALES: Good morning.

13 THE REPORTER: Would you raise your right  
14 hand, please.

15 JOSEPH R. GONZALES

16 having been first duly sworn or affirmed, was  
17 examined and testified as follows:

18 DIRECT TESTIMONY

19 THE REPORTER: Would you state and spell your  
20 full name, please.

21 MR. GONZALES: Joseph R. Gonzales,  
22 G-O-N-Z-A-L-E-S.

23 I'm a retiree from San Juan Generating  
24 Station. I was the operations manager for several  
25 years, and I'm familiar with the environmental upgrades

1 that they've made.

2 What I wanted to talk to you about is totally  
3 different from what you've heard so far. I'm going to  
4 talk about the costs to the people in regard to their  
5 monthly bills. People have said, hey, it's only \$85 a  
6 year if we make the big jump on this environmental  
7 upgrade. What's \$85 a year?

8 Well, since I retired, I've been able to work  
9 with elderly people, hospice people. I'm a volunteer.  
10 I spend a lot of time with folks. And I've had the  
11 opportunity to stand in the state welfare office in line  
12 to get lighting paid, food stamps, fill out papers, for  
13 people that don't have \$85 a year, because some people  
14 think, wow.

15 Also, we could build the economy, we'll throw  
16 10 million, 50 million, 100 million. Hey, 700 million,  
17 let's talk about real money, you know. And then people  
18 just have to pay this \$85 a year, and it's okay, because  
19 they can handle it.

20 Well, I'm only here to talk about those people  
21 who don't and can't handle it, you know. It's really  
22 them that are important to me. So I see the plan  
23 presented by PNM as a great alternative.

24 Finally, there's a time and place where  
25 there's choices, choices that can be good and actually

1 make a difference and also solve the problem. Normally  
2 it's not that way. Normally they're too difficult.  
3 There's too many fights going on between the two sides.

4 But in this case, it's clear -- it's clearer  
5 to me than maybe some -- that in regard to the bigger  
6 picture, what our past mayor, Tom Taylor said, and Bill  
7 Sharer, I agree, there's a lot of information,  
8 technical, you'll hear all that stuff, but there's a lot  
9 of people the difference between \$11 a year and \$85 a  
10 year is big.

11 And it's not just \$85 a year, because PNM has  
12 asked for rate increases, and so if they ask for  
13 21 percent and get 11, then next year they ask for some  
14 more. It keeps adding up. And when you have your  
15 parents in the 80s and 90s and you see some of these  
16 folks, and you know how much of a struggle it is, but if  
17 you go to that state welfare office and you line up with  
18 all those other people -- people in this room don't have  
19 to go there much, but in my case, I do.

20 So that's all I want to say, is wanted to talk  
21 for the people that can't talk for themselves.

22 MS. ORTH: Thank you, Mr. Gonzales.

23 MR. TAYLOR: Dr. Henderson just walked in.  
24 He'll be here in -- well, I think a second or two.

25 MS. ORTH: All right.

1 MR. HENDERSON: Good morning.

2 THE REPORTER: Would you raise your right hand  
3 for me, please.

4 JAMES C. HENDERSON

5 having been first duly sworn or affirmed, was  
6 examined and testified as follows:

7 DIRECT TESTIMONY

8 THE REPORTER: And would you state and spell  
9 your full name.

10 MR. HENDERSON: Yes. Dr. James C. Henderson.  
11 Did you get that?

12 THE REPORTER: Would you spell the last name.

13 MR. HENDERSON: H-E-N-D-E-R-S-O-N.

14 THE REPORTER: Thank you.

15 MS. ORTH: Whenever you're ready --

16 MR. HENDERSON: Ready?

17 MS. ORTH: -- please make your statement.

18 MR. HENDERSON: Thank you.

19 Well, good morning, and thank you for allowing  
20 me the time to speak.

21 And I identified myself, and I'm chairman pro  
22 tem of the San Juan County Commission. And today I'm  
23 here to voice my concern in regards to the issue of  
24 regional haze as related to the state's implementation  
25 plan of which we fully support.

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1           As you know, in New Mexico, coal- and natural  
2 gas-fired power provides more than 70 percent of the  
3 electricity needed by more than a million customers.

4           I would be remiss if I did not recognize the  
5 efforts PNM has made in its implementation of renewable  
6 energy to meet state requirements. However, even with  
7 this implementation, coal and natural gas will continue  
8 to provide most of the electricity to meet the demands  
9 and needs for the customer.

10           I also believe that the efforts the plant has  
11 made in emissions reductions, which outperforms the set  
12 limits and health-based emission standards, is an  
13 indicator to the reasons why adopting the state's plan  
14 is reasonable.

15           I feel it is important that the EIB consider a  
16 fair and balanced approach and look closely at the  
17 overall impact that this decision has on the economic  
18 status, quality of life of its residents and the future  
19 welfare of jobs that accompanies such a decision.

20           I want to say, too, that I don't know if you  
21 intend to do an impact -- economic impact study, but I  
22 can tell you under the EPA side, and I've got a US  
23 senator that wrote them, saying that anything that was  
24 done, any study, BART whatever, should include the  
25 economic impact on the community.

1           And they replied and said yes, that should be  
2 included. But I don't hear people talk a lot about the  
3 impact.

4           The state's plan brings a balance and  
5 fairness. For example, the state proposal would further  
6 reduce the plant's emissions of NO<sub>x</sub> by 20 percent, and  
7 SO<sub>2</sub> limits would also be reduced by 20 percent. In  
8 addition, the state's proposal would cost customers  
9 seven times less than that of the EPA's proposal.

10           It is for that reason that the Environmental  
11 Improvement Board should adopt the draft State  
12 Implementation Plan as proposed by the New Mexico  
13 Environment Department. We support this plan because it  
14 strikes the appropriate balance between minimizing cost  
15 to the customer and further protects the environment.

16           We do not support the federal plan as it would  
17 increase the average PNM residential customer's  
18 electricity bill seven times more than the state's plan.  
19 And furthermore, the impact to local governments,  
20 schools, et cetera, would also create even a greater  
21 financial strain in already woeful budgets.

22           I think we've got to get this into a balance  
23 and understand that if you're looking from the outside,  
24 and we're looking at economic development, don't think  
25 for a minute that a site locator -- they send the big

1 companies on location out, they look very carefully at  
2 what's happening in your state, and we can't be very  
3 proud of what's happening in the State of New Mexico.

4 So I just mention that.

5 From an employment standpoint, the impact  
6 would be even more catastrophic. We're just estimating.  
7 I hope you folks will make that more certain. An  
8 estimated 4,000 jobs has already been lost in this  
9 county over the past three years.

10 Now, that's what I'm getting to. We can't  
11 stand that. And we've got both of those fire --  
12 coal-fired power plants out there under attack, and  
13 we've got to get somewhat reasonable, or you're going to  
14 have such an impact on this community that we won't be  
15 able to recover.

16 The San Juan Generating Station and the San  
17 Juan Coal Mine that supplies fuel to the generating  
18 station are major employers in the Four Corners and  
19 contribute to the economic health of both the state and  
20 the region. The power plants in San Juan County are our  
21 two largest taxpayers. The San Juan plant purchases an  
22 estimated \$30 million in materials and supplies each  
23 year and operates approximately 122 million in contracts  
24 for outside services.

25 Our concern for the federal plan is that it is

1 only expected to perceivably improve visibility in one  
2 of sixteen parks and wilderness areas, which given the  
3 cost is not reasonable.

4 In conclusion, I ask the Environmental  
5 Improvement Board strongly consider the state's plan.  
6 As a local government, we are simply asking for balance,  
7 fairness and consideration to all of the impacts this  
8 decision will have.

9 Thank you.

10 MS. ORTH: Thank you, Dr. Henderson.

11 Is there anyone else who would like to make a  
12 public comment before we hear from San Juan Coal  
13 Company?

14 Ma'am.

15 ELOISE BROWN

16 having been first duly sworn or affirmed, was  
17 examined and testified as follows:

18 DIRECT TESTIMONY

19 THE REPORTER: Would you state and spell your  
20 full name, please.

21 MS. BROWN: Eloise, E-L-O-I-S-E, Brown.

22 THE REPORTER: And would you speak loudly.  
23 Thank you.

24 MS. BROWN: Good morning, everybody.

25 Okay. Dooda Desert Rock is an ad hoc Navajo



1 public interest -- Navajo public interest association  
2 that has formed in December of 2006 in response to an  
3 invasion of the residents of Chaco Rio and Ram Springs  
4 area by agents of a large corporation that was engaged  
5 in exploratory activities on the lands of the Navajo  
6 members. Association members confronted the corporation  
7 in court.

8 Can you guys hear me? Okay.

9 And since then, Dooda Desert Rock has  
10 consistently advocated for the interests of the Navajo  
11 against corporate interests, of their own government,  
12 where action has been proposed or taken to injure the  
13 public health and welfare of the people of the area.

14 The core problem. Dooda Desert Rock joins  
15 others, notably those who want to return to the Four  
16 Corners area to pristine air quality, as befits it, and  
17 those who want to make the area attractive for visitors.  
18 People do not want to see Shiprock, the Four Corners  
19 Monument, Ute Mountain, Mesa Verde and other attractions  
20 of the area.

21 There is a serious discussion of the  
22 possibility of making the Shiprock and its surrounding  
23 area a new state park, but there is general recognition  
24 that existing air quality mars the attractiveness of the  
25 area.

1           There is a bigger problem than that. Air  
2 pollution and regional haze are only symptom of larger  
3 problems. I will return again and again until someone  
4 listens and responds to the documentation that tells us  
5 that the haze we are talking about is, in fact, part of  
6 the public health hazard.

7           The fact that the Four Corners Power Plant and  
8 the San Juan Generating Station endanger the health of  
9 the Navajos was documented in July, 2006 report of the  
10 United States Geological Survey, identified as an air  
11 quality issue for the proposed Desert Rock Power Plant  
12 by the San Francisco office of the Environmental  
13 Protection Agency, with follow-up recommendations that  
14 were ignored by the Bureau of Indian Affairs in handling  
15 the air permit, the confirmed -- and confirmed by the --  
16 by a professional paper of seven academics in a research  
17 article in the Journal of Environmental and Public  
18 Health, 2010.

19           Despite the USGS report, a warning by the  
20 regional EPA office and confirmation of the public  
21 health hazard, no agency of the United States or the  
22 State of New Mexico has paid attention to the issue and  
23 done follow-up queries to the Shiprock Indian Health  
24 Service hospital to confirm the situation for action.

25           Dooda Desert Rock filed a discrimination

1 action against Environmental Protection Agency for  
2 failure to act on its knowledge of the health risk to  
3 Navajos, and its response -- and not only Navajos, but  
4 people live -- that live in the area -- and its response  
5 was that it can discriminate against Navajo under Title  
6 VI of the United States Civil Rights Act of 1964  
7 because, although it requires the agency to deal with  
8 the private persons who discriminate, the law does not  
9 prohibit its acts of discrimination.

10 The agency's environmental justice programs  
11 are only feel good publicity efforts, and they do  
12 Navajos no good. The finding is that the two power  
13 plants pollute the air around Shiprock and cause  
14 respiratory illnesses for Shiprock residents under the  
15 age of five and over the age of fifty-six, are more than  
16 twice as likely to need treatment for respiratory  
17 problems than the rest of the area residents.

18 However, Shiprock residents are more than five  
19 times as likely to be seen at the Northern Navajo  
20 Medical Center for respiratory complaints than residents  
21 of other nearby communities.

22 Mother Earth and tradition. There is no  
23 recognition in international law that Mother Earth has  
24 standing to complain of environmental hazards, and Dooda  
25 Desert Rock complains to you in her name that this is no

1 joke, and there are initiatives and the United Nations  
2 to declare the rights of Mother Earth.

3 Navajos know that our Changing Woman is a  
4 manifestation of the Mother Earth and the fundamental  
5 laws proclaimed a natural law -- the natural law rights  
6 she has.

7 Regional haze degrades Mother Earth, and it  
8 shames her. It must be prevented.

9 In my conclusion, we of Dooda Desert Rock,  
10 speaking with Mother Earth and with residents of the  
11 Shiprock area whose health is jeopardized, call upon the  
12 Air Quality Bureau or the Environmental Improvement  
13 Board -- Department to take all necessary action to  
14 abate haze in our area.

15 Thank you very much.

16 MS. ORTH: Thank you, Ms. Brown.

17 May I have your written statement?

18 Is there anyone else who would like to offer  
19 public comment before we hear from San Juan Coal?

20 If I forgot to say it before, please do sign  
21 in. The sign-in sheets are at the door back there. We  
22 use the sign-in sheets as evidence of public  
23 participation.

24 Sir.  
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GORDON GLASS

having been first duly sworn or affirmed, was  
examined and testified as follows:

DIRECT TESTIMONY

THE REPORTER: Would you state and spell your  
name, please.

GORDON GLASS: Gordon Glass, G-L-A-S-S.

Thank you for having this hearing in  
Farmington. I do wish that you would use a microphone.  
Some of us older, less well-hearing people have a hard  
time, and there's one right behind you, if they could  
set it up, and it would be helpful, for future speakers.

I'm standing here today because I assume that  
each of you is on this Board because some part of your  
life you have decided to operate in an excellent and a  
long-term fashion, that you did the work necessary to be  
able to be who you are and what you do, you put in the  
time, and you put in the effort, spent the money to  
become excellent at something.

And I think that actually is the choice we're  
talking about. As we talk about 40 more years of this  
plant, do we want it to be marginal, or do we want it to  
be excellent? Do we want to do the cheapest thing, or  
do we want to do the best thing? Do we want to pay  
ahead for the people coming? Because I know that I'm

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1 not going to be here in 2050. Do we want to pay ahead  
2 for the people coming that we'll have the best possible  
3 use?

4 We are dependent on coal and coal-fired  
5 electricity right now. That's a reality that we have  
6 created in this way. But change is coming, and it seems  
7 to me like the choice before you is whether you want to  
8 do something of excellence or whether we want to take  
9 the marginal way out.

10 I don't minimize, like some people, the effect  
11 of this, the health effects, visibility effects. Those  
12 are real. And we're talking about 40 years of it. And  
13 we can do better. And so the -- the least effective is  
14 not the best for the long-term. We want to do the -- we  
15 want to do the best, I know for my grandchildren and  
16 children beyond. But also, we need to realize that  
17 we're going to pay one way or the other on the  
18 transition of energy.

19 I can say personally I've invested in rooftop  
20 solar, and I'm a clean energy producer. I produce twice  
21 what I use, and I'm willing to bear that cost. And I'm  
22 able to bear that cost. I understand that. And many  
23 other people can, and some other people can't.

24 But the reality is the difference in cost here  
25 is something that the society can absorb. And the

1 company should absorb part of that, as well.

2 And so what I would ask you to do is consider  
3 that excellence and long-term thinking is a tremendous  
4 issue for our country, and you're being faced with just  
5 one of the many decisions that need to be done.

6 I'd like to say that the city of Farmington  
7 for more than 20 years did not raise water rates,  
8 because people don't like rates being raised. And then,  
9 as the infrastructure began to crumble, they had to  
10 raise water rights considerably. And people are paying  
11 a lot for water right now. This week our golf course is  
12 paying a lot for water use right now.

13 But part of that was because we didn't buy  
14 into excellence over time. We fought for and we sought  
15 cheap solutions.

16 And so I ask you to consider that these are  
17 important factors here and that doing the best does  
18 cost. And we are in a society like no other society in  
19 the world in that we have -- we can afford to do the  
20 best, like, for the most part, we've always done.

21 Thank you.

22 MS. ORTH: Thank you, Mr. Glass.

23 Sir.

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MIKE EISENFELD

having been first duly sworn or affirmed, was  
examined and testified as follows:

DIRECT TESTIMONY

THE REPORTER: State and spell your full name,  
please.

MR. EISENFELD: Mike Eisenfeld,  
E-I-S-E-N-F-E-L-D.

THE REPORTER: Thank you.

MR. EISENFELD: EIB, thank you, and welcome to  
Farmington. I appreciate your being here.

My name is Mike Eisenfeld. I live with my  
family here in Farmington. I work for an organization  
called the San Juan Citizens Alliance.

We're a -- here in Farmington, we're a dynamic  
community with multi-jurisdictional issues. We, of  
course, have the four states, three EPA regions, tribal  
lands. We have a lot going on here. There's a lot of  
us who are invested in our community.

Clean Air Act compliance and a regional haze  
program, what we're talking about at today's hearing, is  
an issue that first came up in 1999, a sufficient time  
for PNM to comply with the regional haze program.

The most recent State Implementation Plan  
doesn't meet the Best Available Retrofit Technology

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1 requirements. Selective noncatalytic reduction is not  
2 Best Available Retrofit Technology. The 20 to  
3 40 percent reduction in NO<sub>x</sub>, nitrogen oxides, is  
4 insufficient.

5 PNM has recently filed their intentions to  
6 keep San Juan Generating Station online until 2053.  
7 With that should come a requirement to step up pollution  
8 reduction. Again, the San Juan Generating Station is  
9 18th in the nation in nitrogen oxide emissions, which  
10 has a dramatic impact on regional haze and public  
11 health.

12 Due to the fact that we're relied on for  
13 50 percent of PNM's electricity with the San Juan  
14 Generating Station for the state, we expect a commitment  
15 from PNM to address some of the issues that have been  
16 happening for decades.

17 Ozone attainment is very possible for San Juan  
18 County. We need to address the NO<sub>x</sub> emissions from San  
19 Juan Generating Station as part of the ozone issue that  
20 could come into play as soon as July of 2011.

21 We request that the EIB take an honest  
22 appraisal of ways to address equity issues of San Juan  
23 Generating Station and the real costs to our community  
24 in continued reliance on coal.

25 Thank you very much.

1 MS. ORTH: Thank you, Mr. Eisenfeld.

2 Ma'am.

3 MS. COLLINS: Here's a copy for each of the  
4 commission.

5 MS. ORTH: Thank you.

6 DEANNA COLLINS

7 having been first duly sworn or affirmed, was  
8 examined and testified as follows:

9 DIRECT TESTIMONY

10 THE REPORTER: State and spell your full name,  
11 please.

12 MS. COLLINS: Deanna Collins, C-O-L-L-I-N-S.

13 And I'm with the League of Women Voters of La Plata  
14 County.

15 And I'll be reading a statement for the  
16 league.

17 The League of Women Voters of La Plata County  
18 in Colorado urges the Environmental Improvement Board to  
19 reject the New Mexico Environment Department's revisions  
20 to the Regional Haze Rule in the New Mexico State  
21 Implementation Plan and to support the EPA's plan  
22 requiring the San Juan Generating Station to install SCR  
23 technology to reduce the plant's nitrogen oxide  
24 emissions by 83 percent.

25 Installation of the SCR technology at the San

1 Juan Generating Station would improve the health and  
2 economic opportunities, provide cleaner air and address  
3 environmental justice for people in the Four Corners,  
4 many of whom are low income and live below the poverty  
5 level.

6 La Plata County borders San Juan County, New  
7 Mexico, in which the San Juan Generating Station is  
8 located. Prevailing winds carry pollutants from the  
9 coal-fired power plant to our county in Southwest  
10 Colorado, as well as all counties of the Four Corners  
11 region and four sovereign tribes.

12 The proposed revisions to New Mexico's good  
13 neighbor provisions of the State Implementation Plan of  
14 the Clean Air Act would reduce haze significantly less  
15 than the EPA proposal. The SCR technology proposed by  
16 the EPA would have almost a four fold NO<sub>x</sub> control  
17 effectiveness over the SNCR technology proposed in the  
18 revised State Implementation Plan.

19 Nitrogen oxide, a major cause of haze, is also  
20 a precursor to ground level ozone, which is regulated by  
21 the EPA. Should the EPA lower their ozone standard this  
22 summer, La Plata County could be in nonattainment.

23 The San Juan Generating Station is one of the  
24 major sources of nitrogen oxide in the area's air shed.  
25 Our EPA region, state, nor county has any regulatory

1 authority over the pollutants that are in our air from  
2 New Mexico, including the power plant, and we could  
3 potentially have difficulty coming into attainment  
4 because of pollutants that are not in our jurisdiction.

5 A decision factor used for the proposed  
6 revisions was economic information provided by PNM of  
7 New Mexico. They estimated a rate increase of \$82 per  
8 year per residential ratepayer from the installation of  
9 SCR technology.

10 A recent study, which is referred to in the  
11 letter, on the health impacts from the San Juan  
12 Generating Station estimated that in 2010 33 deaths, 50  
13 heart attacks, 600 asthma attacks and 23 hospital  
14 admissions resulted from pollution from the power plant.  
15 The resulting health care costs were estimated at 255  
16 million for that year.

17 This figure breaks down to over 600 per person  
18 cost per capita in the 10 counties in the Four Corners  
19 region, which is significantly larger than the estimated  
20 rate increase, and is incurred by residents that receive  
21 little or no benefit from the electricity produced at  
22 the San Juan Generating Station.

23 National parks and monuments, wilderness areas  
24 and forests bring tremendous economic benefit to the  
25 Four Corners region. We rely on tourism and natural

1 resources they provide for long-term economic growth and  
2 sustainability. With increased oil and gas development,  
3 overgrazing and prolonged drought, combined with  
4 coal-fired power plant pollution, we have seen a  
5 continual deterioration in our air quality.

6 The League of Women Voters of La Plata County  
7 urges the New Mexico Environmental Board as a good  
8 neighbor to require the most stringent of technologies  
9 to be installed at the San Juan Generating Station. We  
10 also urge you to promote cleaner forms of energy in New  
11 Mexico that encourage environmental justice and overall  
12 health of the region.

13 Thank you.

14 MS. ORTH: Thank you, Ms. Collins.

15 Is there anyone else who would like to make  
16 comment?

17 Sir.

18 JAMES CRAWFORD

19 having been first duly sworn or affirmed, was  
20 examined and testified further as follows:

21 FURTHER DIRECT TESTIMONY

22 THE REPORTER: State and spell your full name,  
23 please.

24 MR. CRAWFORD: I'm James Crawford, J-A-M-E-S  
25 C-R-A-W-F-O-R-D.

1           Madam Chairman and Board members, I spoke to  
2 you yesterday, and I just couldn't help myself, I had to  
3 add one thing today. So what I'm going to talk about is  
4 in my written comments, but I just need to bring this  
5 up.

6           The main thrust of what we're being asked to  
7 do is aimed at NO<sub>x</sub> emissions. And I -- if you look  
8 closely in the record, you will find that NO<sub>x</sub> is a very  
9 minor part of all the pollution at -- measured at the  
10 monitoring sites.

11           You can look at NMED Exhibit 11, Figures 71  
12 through 715. For instance, on the worst days, NO<sub>x</sub> only  
13 makes up 8 percent of the pollutants at Bandelier and  
14 only 7.1 at Wheeler Peak Wilderness. And it's the same  
15 for almost all other Class I areas.

16           So I guess my question is why is the only  
17 action proposed in this plan one of using a sledgehammer  
18 to drive a thumb tack?

19           We're spending a huge amount of money on a  
20 very insignificant part of the problem. The plan isn't  
21 really addressing all of the major -- if you look at  
22 those pie charts in the plan, you know, the major  
23 pollutants are not NO<sub>x</sub>. And what PNM is being asked to  
24 do is just further address the NO<sub>x</sub> problem.

25           So, you know, I think we're addressing the

1 wrong problem.

2 Thank you.

3 MS. ORTH: Thank you, Mr. Crawford.

4 Anyone else?

5 BILL HAGLER

6 having been first duly sworn or affirmed, was

7 examined and testified as follows:

8 DIRECT TESTIMONY

9 THE REPORTER: State and spell your full name,  
10 please.

11 MR. HAGLER: Bill Hagler, H-A-G-L-E-R.

12 THE REPORTER: Thank you.

13 MR. HAGLER: Good morning.

14 I'm here to talk to you today about the EIB  
15 Case 11-01(R), the haze proposal for San Juan Generating  
16 Station.

17 I'm a small business owner in Farmington.  
18 I've lived here for 42 years. I served 25 years on the  
19 Farmington Public Utility Commission. I'm a former  
20 member of New Mexico Environmental Improvement Board,  
21 and currently serve as vice-president for the New Mexico  
22 Utility Shareholders Alliance.

23 I share this information so you will  
24 understand that I have both a vested interest and  
25 knowledge of the decision before you.

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1 PNM fully upgraded the San Juan Station in  
2 2009 and significantly lowered the plant's emission of  
3 nitrogen oxide, sulfur dioxide, mercury, particulate  
4 matter. The fact that the EPA would be here less than  
5 two years later to impose further regulation on this  
6 recently upgraded plant is troubling, especially at a  
7 time when so many of us are struggling.

8 However, if regional haze must be addressed, I  
9 strongly urge you to adopt the state's plan. The  
10 technology difference between this plan and the EPA's  
11 plan, which is more -- less cost effective, will produce  
12 a negligible difference in the haze situation being  
13 addressed, but at staggering difference in costs.

14 The EPA Region 6 plan for San Juan has -- San  
15 Juan Generating Station has an estimated cost of \$750  
16 million to \$1 billion, or at least \$85 a year for the  
17 average customer, compared to \$77 million, or \$12, for  
18 the state's plan.

19 In addition, the San Juan Generating Station  
20 and San Juan Coal Mine who supplies the fuel are both  
21 major employers, as have been pointed out in this  
22 region, and they contribute to the economic health of  
23 our area. The power plant and the mine employs nearly  
24 1,000 people full-time, at good -- good wages.

25 The plant pays millions of dollars each year



1 in government, tribal and property taxes, as well as  
2 coal royalties. San Juan also purchases 30 million in  
3 materials and supplies, 122 million in contracts for  
4 outside services.

5 So this is a major economic engine in this  
6 area, as Dr. Henderson pointed out.

7 I strongly urge you to adopt the State  
8 Implementation Plan. It will help preserve the jobs and  
9 the economy in this region. While being more sensitive  
10 to the costs, it will ultimately be borne by the  
11 ratepayers.

12 Thank you.

13 MS. ORTH: Thank you, Mr. Hagler.

14 Anyone else like to make public comment?

15 There will be one more invitation after we've  
16 heard from San Juan Coal Company.

17 Sir.

18 DOYLE MEYER

19 having been first duly sworn or affirmed, was  
20 examined and testified as follows:

21 DIRECT TESTIMONY

22 THE REPORTER: State and spell your full name,  
23 please.

24 MR. MEYER: Doyle Meyer, D-O-Y-L-E M-E-Y-E-R.

25 THE REPORTER: Thank you.

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1 MR. MEYER: Well, I'll be short.

2 Recently the Tennessee Valley Authority  
3 announced that under pressure from the EPA they were  
4 closing 18 units. And I don't know how they're planning  
5 on replacing the electricity from those 18 units. If  
6 they replace it with nuclear energy, it will cut the  
7 rates to the end user about in half.

8 There are a couple of plants being built right  
9 now in the south. If they go to natural gas plants,  
10 their rates will be about two to three times what it  
11 would be for coal. If they go to wind energy, it will  
12 also be two to three times more expensive to produce  
13 than coal energy. If they go to solar somehow or  
14 another, it will be four to eight times more expensive  
15 to produce electricity from a solar source than it would  
16 be from a coal-fired plant.

17 I'm retired, and I would really hate to see my  
18 rates double, triple, quadruple because of actions that  
19 force a plant to close, like it looks like the APS plant  
20 is going to be doing.

21 And I just recommend that we go with the state  
22 plan, simply because it will probably allow the plants  
23 to continue in operation for some time to come. If they  
24 close -- if actions on the part of the Board requires  
25 the plants to close some of the units, it will

1 inevitably cause our rates to increase without, in my  
2 mind at least, significantly improving the air quality  
3 in this area.

4 Thank you.

5 MS. ORTH: Thank you, Mr. Meyer.

6 Anyone else?

7 All right. Mr. Roybal, we'll turn to San Juan  
8 Coal Company.

9 MR. ROYBAL: Good morning, Madam Hearing  
10 Officer, members of the Board, and Madam Chairman.

11 Charles Roybal from BHP Billiton and San Juan  
12 Coal Company.

13 Welcome to San Juan County and Farmington, New  
14 Mexico. I really hope that you're enjoying your time  
15 here and this wonderful facility, San Juan Community  
16 College. We're very happy to host you and have you  
17 here. The members of our community, our leaders and --  
18 feel it's very important that you are able to do that.

19 San Juan Coal Company will have two witnesses,  
20 and I'd like to have them presented one at a time.

21 Our first witness is Mr. John Cline.

22 THE REPORTER: I will ask you both to raise  
23 your right hands.

24 (JOHN CLINE and NORMAN BENALLY were duly sworn  
25 or affirmed.)

1 THE REPORTER: Thank you.

2 MR. CLINE: My name is John Cline, J-O-H-N  
3 C-L-I-N-E.

4 JOHN CLINE

5 having been first duly sworn or affirmed, was  
6 examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. ROYBAL:

9 Q. Mr. Cline, did you prepare written prefiled  
10 testimony in this case?

11 A. I did.

12 Q. Have you had -- for whom did you provide that  
13 testimony?

14 A. For the San Juan Coal Company.

15 Q. And have you had the opportunity to review  
16 that testimony, and do you have any corrections or  
17 addition to that testimony?

18 A. I have, and I have no revisions to offer.

19 Q. Do you adopt that written testimony as your  
20 own?

21 A. I do.

22 Q. Could you give the Board a little bit of your  
23 background and credentials?

24 A. Sure.

25 Madam Hearing Officer, Madam Chairman and

1 other members of the Board, as I said, my name is John  
2 Cline. I'm a lawyer, licensed in the commonwealth of  
3 Virginia. I have a solo practice that focuses on energy  
4 and environmental issues, with a particular emphasis on  
5 Clean Air Act matters.

6 I have a JD degree from the University of  
7 Richmond and a bachelor of science in chemical  
8 engineering from the University of Virginia.

9 I've been involved in Clean Air Act matters  
10 for over 30 years. You can see I've got the gray hair  
11 and lack of hair to prove it. In that capacity, I  
12 represent primarily mining, industrial, electrical and  
13 transportation sectors of the economy.

14 With respect to regional haze, from 2004 to  
15 2009, I represented a coalition of large industrial and  
16 utility companies in the Southeast with operations  
17 throughout that portion of the United States. I have  
18 also represented individual clients on matters related  
19 to visibility protection, including the determination of  
20 BART and reasonable progress.

21 MR. ROYBAL: With that, Madam Hearing Officer,  
22 we offer Mr. Cline's testimony as evidence in this  
23 hearing.

24 MS. ORTH: All right.

25 And he's ready to stand for questions?

1 MR. ROYBAL: Yes. Well, no. He will  
2 summarize his testimony. We were just offering --

3 MS. ORTH: The exhibit.

4 MR. ROYBAL: -- the exhibit. Yes.

5 MS. ORTH: Yes, sir.

6 Are there objections?

7 Hearing none, it's admitted.

8 Thank you.

9 (Exhibit SJCC B admitted into evidence.)

10 Q. (BY MR. ROYBAL) Mr. Cline, would you please  
11 summarize your written testimony.

12 A. The purpose of my testimony on behalf of San  
13 Juan Coal Company is to strongly encourage the Board's  
14 adoption of the state plan for BART for the San Juan  
15 Generating Station.

16 And in doing so, we hope to help the Board  
17 understand that Congress delegated broad discretion to  
18 each state to account for local conditions in  
19 circumstances when the state determined BART on a  
20 source-specific basis by balancing several factors that  
21 are designated in the statute.

22 Now, yesterday the Board heard public comments  
23 such as the following:

24 The proposed SIP is on shaky grounds.

25 It conflicts with EPA's findings.

1           The Department is not using good science, nor  
2           is it using good policy.

3           The Department must have data that quantifies  
4           a balance between the cost and the health impacts.

5           Well, each of those statements is simply  
6           wrong, because they're based on a premise that really  
7           isn't supported by the Clean Air Act.

8           However, instead of focusing so much on EPA's  
9           BART determination and how that was made, we believe  
10          that the Department focus has been correctly based on  
11          what Congress intended it to do, and they determined it  
12          appropriately.

13          I have to take an aside here and just address  
14          best available control technology -- Best Available  
15          Retrofit Technology.

16          And there is a rather broad misperception that  
17          best in that terminology means maximum emission  
18          reductions. That is not the case. Best available  
19          control technology means the best technology selected on  
20          a case-by-case basis for a specific source considering  
21          five specific factors that Congress identified.

22          Now, Congress enacted the visibility  
23          protection program in 1977. And it's not well known,  
24          however, that in 1980 EPA promulgated visibility  
25          regulations. These were addressed toward what is called

1 reasonably attributable visibility impairment, or RAVI.  
2 But it's important to note that EPA promulgated these  
3 regulations in keeping with the statute, and they even  
4 had BART guidelines at that particular time.

5 Now, there's a fundamental principal of  
6 statutory construction that most courts will give more  
7 weight to an agency's interpretation of the statute when  
8 that interpretation is made contemporaneously with the  
9 statutory provisions that were enacted.

10 And that's particularly meaningful here,  
11 because if you go back in history and look at how EPA  
12 addressed this particular program in the early 1980s, it  
13 provides some revealing illustrations of how BART should  
14 be determined.

15 Unfortunately, in the current determinations  
16 for BART and the BART guidelines, EPA has not continued  
17 to emphasize the congressional preference for states to  
18 make BART determinations. So that if you look back at  
19 some of the statements that EPA made in 1980, and will  
20 juxtapose those to what EPA's done in the future.

21 I believe you have copies of my direct  
22 testimony, so I don't plan on reading all of it, but I  
23 must read a couple statements that EPA made.

24 For example, "The visibility regulations give  
25 the States a great deal of flexibility in determining



1 the measures they choose to secure -- to assure  
2 reasonable progress. As the Act requires, EPA has  
3 provided measures for the States to consider, but left  
4 the actual 'mix' of those measures adopted to the  
5 States' discretion."

6 So there is no mandate under the Clean Air Act  
7 that it must be done a certain way.

8 EPA further said that the state retains final  
9 authority for the development of the SIP, BART  
10 determinations and implementation of the visibility  
11 regulations.

12 Now, as I mentioned, Congress, of course,  
13 mandated that there be five specific factors that must  
14 be considered when determining BART. To that end, I  
15 want you to pay attention to what EPA said about those  
16 factors.

17 "It is, of course, not possible to provide  
18 more specific guidance on how a State should balance the  
19 various BART factors while simultaneously giving the  
20 State more flexibility to strike the balance it deems  
21 appropriate in light of local and site-specific  
22 considerations. A strictly quantitative approach,  
23 however, is not necessarily a better alternative.

24 "The procedures outlined in the 1980 BART  
25 Guidelines allow States to consider local conditions and

1 circumstances in their BART decisionmaking. This  
2 recognizes that States have the most complete knowledge  
3 of local factors that would affect the BART decision."

4 So in other words, there is no single right  
5 answer for BART, but it's clear that under the law  
6 Congress very much wanted the states to make the  
7 determination.

8 Now, that determination is supposed to be made  
9 by a reasonable balance by the state. That's not to say  
10 that EPA or some other third party could also come up  
11 with their reasonable balance. But the prerogative is  
12 that the state -- it is not up to EPA to second-guess,  
13 nor other third parties to second-guess that  
14 determination.

15 Yesterday, the Board also heard the following  
16 public comment, "SCR is mandated and required by the  
17 Clean Air Act."

18 Well, that statement is flatly wrong. There  
19 is nothing within the Clean Air Act provisions 169A or  
20 169B that would compel such a conclusion.

21 So let's briefly consider some of the basic  
22 flaws of EPA's analysis of how it determined BART.

23 EPA's determination has not resulted from a  
24 balancing of statutory factors in any meaningful way  
25 that reflect New Mexico's particular circumstances and

1 concerns.

2 EPA's determination has not been substantively  
3 informed by any source-specific or site-specific  
4 matters.

5 EPA's BART determination did not even consider  
6 potential visibility improvement in all of the Class I  
7 areas in New Mexico.

8 In short, EPA's BART determination consists of  
9 a very narrow analytical methodology that seems designed  
10 to produce a predetermined result.

11 In effect, it's no secret that EPA would like  
12 to have SCR installed on every coal-fired power plant  
13 that refuses to shut down.

14 EPA's so-called five-factor BART analysis  
15 really degrades into an analysis of cost effectiveness.  
16 And yesterday there was a lot of emphasis and discussion  
17 about cost effectiveness in terms of dollars per ton.

18 Now, that is a number that EPA typically uses.  
19 They require it in the BART guidelines. But stop and  
20 think about it. Dollars per ton of pollutant reduced  
21 says nothing about the effectiveness of visibility  
22 improvement. I mean, for my money, I would like to see  
23 dollars spent per deciview of visibility improvement.

24 But the BART guidelines very much emphasize  
25 dollar per ton. In fact, that is not the sole, but the

1 very utmost primary determinant in EPA's BART  
2 determination. Now, the Department used that same  
3 metric, but fortunately, they didn't put all their eggs  
4 in one basket.

5 On the other hand, the Department's  
6 methodology for determining BART is a measured  
7 application of EPA's BART guidelines which reflects an  
8 appropriate weighting of the statutory factors to  
9 accommodate local conditions and circumstances just as  
10 Congress intended.

11 EPA's BART determination, for example, has  
12 been performed in a vacuum, whereas the state's  
13 determination is just a part of a much broader regional  
14 haze plan that integrates that BART determination into  
15 the rest of their planning.

16 And make no mistake about it, this is not a  
17 one-shot deal. As Ms. Uhl testified yesterday, this is  
18 a very young program. There will be a series of  
19 planning steps, and the Board will have other bites of  
20 the apple for Public Service New Mexico as well as a  
21 variety of other sources.

22 Contrary to EPA's one-size-fits-all approach  
23 to determining BART, the Department's consideration of  
24 statutory factors have been weighed according to  
25 source-specific matters, in particular, the relative

1 levels of adverse economic impacts on residents of New  
2 Mexico and the specific challenges posed by this  
3 particular BART retrofit for a forced draft boiler, such  
4 as those at San Juan.

5 I believe that the Department should be  
6 applauded for applying the statutory factors in the  
7 manner in which Congress originally intended.

8 So in conclusion, Congress had a clear vision  
9 of how BART should be determined. To that end, the  
10 Department's BART determination fulfills that vision.  
11 EPA's determination, on the other hand, does not. For  
12 that reason, San Juan Coal Company strongly encourages  
13 you to adopt the state's determination.

14 Thank you for letting me speak to you.

15 MS. ORTH: Thank you, Mr. Cline.

16 MR. ROYBAL: We offer the witness for  
17 questions.

18 MS. ORTH: Thank you.

19 Mr. Grantham, do you have questions of  
20 Mr. Cline?

21 MR. GRANTHAM: No questions.

22 MS. ORTH: Mr. Alvidrez?

23 MR. ALVIDREZ: No questions.

24 MS. ORTH: Mr. Rose?

25 MR. ROSE: No questions.

1 MS. ORTH: Anyone else?

2 The Board.

3 EXAMINATION

4 BY THE BOARD:

5 MS. ORTH: Member Ryan.

6 MS. RYAN: Mr. Cline, thank you for being  
7 here. I appreciate the congressional and regulatory  
8 history that you've outlined to us for the Board. I  
9 think that is important when we're looking at  
10 implementing regulations for our state and the -- you  
11 know, the intent that went behind them many years ago.

12 I know that you have had involvement in these  
13 SIPs with other states, and so I'm particularly wanting  
14 to know -- you've termed EPA's one-size-fits-all  
15 proposal, and I'd like you to discuss that as  
16 specifically as you can on -- is the proposal that the  
17 EPA has outlined for the San Juan Generating Station the  
18 same that it has done -- I mean, is it pretty much the  
19 same as it's tried to do in other states, or, you know,  
20 is it -- is it different?

21 Is it putting New Mexico in the same box with  
22 other states?

23 MR. CLINE: Yes, ma'am, it is. It very much  
24 is.

25 One of the frustrating parts about this

1 regulatory program is you have the regulations, and you  
2 have a series of informal guidance memoranda issued by  
3 EPA staff that purports to implement the regulations,  
4 but in actuality goes far beyond what the regulations  
5 and certainly what the statute requires.

6 Now, EPA will politely say, "The states have  
7 discretion. They make the determination. But remember,  
8 we have to approve your SIP."

9 So there's that thumb that they hold on the  
10 states, and they make no bones about a strong preference  
11 for SCR.

12 And they support that determination primarily  
13 through their cost analyses that comes up with this  
14 bogus dollar per ton figure that is reasonable in EPA's  
15 eyes. It's -- there's no bright line test, and the  
16 states have no idea what it might be until they make the  
17 determination, then they hear from EPA.

18 But I would say that in every case that I'm  
19 aware of any state that has made a BART determination  
20 for a coal-fired power plant that has not proposed SCR  
21 has received considerable push back from EPA.

22 MS. RYAN: So you're saying that the SIPs that  
23 have been proposed to the EPA have not been approved or  
24 in a delayed process of approval or --

25 MR. CLINE: That's correct. Yes.

1 MS. RYAN: Okay.

2 MR. CLINE: The whole regulatory program for  
3 regional haze and BART has this terrible history of  
4 start and stop, start and stop. I mean, the statute was  
5 enacted in '77, and here we're just getting around to  
6 regional haze regulations in 1999 that were changed in  
7 2005.

8 But there are no -- well, there may be a  
9 couple BART determinations that EPA has approved to  
10 date, but curiously, they're approving not the SIP, but  
11 just the BART determination that selects SCR as the EPA  
12 prefers.

13 That's not really logical to me. It's  
14 supposed to be a regional haze SIP, and why you would  
15 sever the BART from everything else -- I'm not even sure  
16 if that's lawful. But again, I -- at the risk of  
17 sounding paranoid, I know that EPA wants us to, and if  
18 the state has offered that, they'll approve that.

19 MS. RYAN: So do you think the PNM and NMED's,  
20 you know, SIP proposal is a bit pointless, or do you  
21 think it's worth trying?

22 MR. CLINE: Oh, I think under the  
23 circumstances it's worth trying. The gentleman that  
24 offered the public comment earlier about this focus on  
25 NO<sub>x</sub> really is kind of misleading, because nitrates are a



1 very small part of the visibility problem in New Mexico.

2 But having said that, the state does have a  
3 mandate to come up with a regional haze SIP for the  
4 period from 2004 to 2018. And the one thing that's  
5 clear they must do is make some BART determination for  
6 NO<sub>x</sub> emissions. As we heard yesterday, the equivalent for  
7 SO<sub>2</sub> is already incorporated within the regional backstop  
8 trading program.

9 So yes, the step for NO<sub>x</sub> BART for PNM is  
10 probably appropriate. I think they should be given all  
11 the credit in the world for the reasonable progress that  
12 they achieved with the recent retrofits that were made.  
13 That's a big step and, in many people's minds, could be  
14 BART in and of itself. But as I understand, PNM has  
15 agreed to take the next step and go with SNCR.

16 And keeping in mind that there will be another  
17 regional haze plan, another regional haze plan, another  
18 and another.

19 MS. RYAN: So is my understanding correct  
20 that -- I know that there's like an August deadline for  
21 EPA approval. If we were to implement the SIP, could  
22 they approve it? And you're saying they could approve  
23 it in part and not in part. And if so, would our state  
24 be given time to amend or revise our SIP and resubmit  
25 it?

1           MR. CLINE: You know, that's -- I can't really  
2 answer that question. That's going to be an EPA  
3 determination. I mean, clearly the way the law reads,  
4 the State of New Mexico and a whole bunch of other  
5 states missed a deadline for submitting a regional haze  
6 request.

7           And that started a two-year clock once the EPA  
8 made that finding. If they didn't submit it by then,  
9 then EPA says we could step in and propose a FIP,  
10 presumably a regional haze FIP, and not just BART.

11           What latitude the State of New Mexico may have  
12 vis-a-vis the court settlement that established the  
13 state, I believe it's now August of this year, for the  
14 SIP -- I don't know how much flexibility there is.

15           MS. RYAN: Thank you.

16           MS. ORTH: Member Bryce.

17           MR. BRYCE: Mr. Cline, in your opinion, is  
18 the -- if the SIP were to be submitted, is there  
19 anything that you think should be further evaluated or  
20 changed in the SIP to less offend the EPA?

21           MR. CLINE: I really can't think of anything.  
22 I mean, I know they read -- made -- EPA made some rather  
23 substantive comments, and I've seen the Department's  
24 step-by-step response to those. I thought those  
25 responses were thorough and appropriate.

1 MR. BRYCE: Okay. That's all I have.

2 Thanks.

3 MS. ORTH: Other --

4 MR. VOLKERDING: I just want to make a  
5 comment, and then maybe you can follow up on a comment  
6 on that. It kind of brings a little bit of this  
7 together.

8 Is -- in the rule, EPA developed what they  
9 call presumptive BART limits based on a source of --  
10 what kind of source it is and what kind of fuel. And  
11 under EPA's own presumptive BART, the limits that are  
12 being set forth by the state SIP are less than EPA's  
13 presumptive BART.

14 So I just throw that out there. If we're  
15 concerned about what EPA might do, we are at least --  
16 the state's plan is less than presumptive BART. And I  
17 don't know if you want to follow up on that.

18 MR. CLINE: Well, that's a great point. And  
19 I've seen the presumptive BART limits used for you and  
20 against you dependent upon where you are on that line.

21 The BART guidelines are not the Holy Grail.  
22 The statute says EPA must establish BART guidelines for  
23 power plants greater than 750 megawatts. But those are  
24 guidelines and don't really carry the weight of  
25 regulations, in my mind. And so there should be some

1 flexibility.

2 But the state would have reason to believe  
3 that if it selected a limit that met the presumptive  
4 limit, that should satisfy the agency.

5 MR. VOLKERDING: Thanks.

6 MS. ORTH: Other Board questions?

7 MS. PEACOCK: Yes.

8 Mr. Cline, just to clarify, are you saying  
9 that EPA has never adopted any SNCR BARTs or SIPs from  
10 states?

11 MR. CLINE: I'm certainly not familiar with  
12 any, not for a coal-fired power plant. No. EPA's SIP  
13 approval for regional haze SIPs -- you could probably  
14 count them on one hand, and those came up yesterday, and  
15 I believe the Black & Veatch people mentioned Idaho, or  
16 maybe it was Oregon. Yeah. And there's a handful of  
17 others that EPA has proposed to approve the BART  
18 determination.

19 In each case, I believe that is SCR.

20 MS. ORTH: Other Board questions?

21 Other Board questions?

22 Mr. Roybal, do you have any redirect?

23 MR. ROYBAL: Just a couple of clarifications,  
24 Madam Hearing Officer.

25

## REDIRECT EXAMINATION

1  
2 BY MR. ROYBAL:

3 Q. Mr. Cline, any reference in your testimony  
4 to BACT, I think you were talking about BART in every  
5 other instance?

6 A. That's correct. Yeah. If I said BACT -- as  
7 was pointed out yesterday, that is a new source review  
8 terminology. BART, with the R, stands for retrofit,  
9 obviously, for existing sources.

10 Q. And finally, it is your conclusion that you  
11 would support the adoption of the NMED proposal for  
12 this --

13 A. Very much so.

14 MR. ROYBAL: Okay. Nothing further.

15 MS. ORTH: Thank you.

16 Is there any reason not to excuse Mr. Cline?

17 MR. GRANTHAM: Madam Hearing Officer.

18 MS. ORTH: Yes.

19 MR. GRANTHAM: I just had one follow-up  
20 question.

## CROSS EXAMINATION

21  
22 BY MR. GRANTHAM:

23 Q. Mr. Cline, in your testimony, you referred to  
24 there being SIP revisions down the road, every five  
25 years, and I think you used the phrase "another bite at

1 the apple."

2 And my question is is it your opinion that  
3 this Board will have another chance to revisit the San  
4 Juan Generating Station in particular with regard to  
5 regional haze?

6 A. Oh, yeah, very much so. They won't be able to  
7 make another BART determination for NO<sub>x</sub>, but the -- the  
8 Board would have the obligation to adopt future regional  
9 haze SIPs that achieve reasonable progress in the  
10 future, and if the Department determines that reasonable  
11 progress may be achieved through further reductions for  
12 San Juan Generating Station, that certainly is the goal.

13 MR. GRANTHAM: Thank you.

14 MS. ORTH: Anything else?

15 FURTHER EXAMINATION

16 BY THE BOARD:

17 MR. CASCIANO: I do have one more question.

18 Mr. Cline, we've heard allusion to health  
19 effects from emissions, and I wondered if you could talk  
20 about how that is supposed to be considered with the  
21 BART determination and whether the Department has done  
22 that properly in your opinion, per the Clean Air Act for  
23 this application?

24 MR. CLINE: Sure. The regional haze program  
25 is kind of different from most Clean Air Act programs.

1 The Clean Air Act is focused on protection of public  
2 health and welfare. But there is a visibility problem  
3 that Congress wanted to address. And so the focus of  
4 this proceeding is on meeting the statutory and  
5 regulatory requirements for regional haze.

6 Now, to the extent that there are collateral  
7 benefits, such as reduced health effects, you know,  
8 that's just all the more reason to adopt that type of  
9 plan.

10 But I think it's inappropriate to compare  
11 regional haze plans on which has the alleged better  
12 health improvement part. You need really to stick to  
13 the act and five factors, and health effects weren't one  
14 of them. Congress said there's five factors to  
15 consider.

16 And then if your reduction program does  
17 achieve health benefits, which is -- the Department's  
18 does -- it just doesn't achieve as many as some people  
19 would like. Okay. But that should not be viewed as a  
20 black mark against the Department's plan.

21 MR. CASCIANO: Okay. Thank you.

22 MS. RYAN: In follow-up, so what you're saying  
23 is our focus -- you're saying that our Board's focus  
24 should be on visibility as to regional haze in  
25 consideration of the five factors only.

1 MR. CLINE: Yes, ma'am. Yeah. Very much so.

2 I mean, there are other Clean Air Act programs  
3 like New Source Performance Standards and NESHAPs and  
4 PSD where you do focus on health impacts. But here it's  
5 visibility and the five factors that Congress said each  
6 state should balance.

7 MR. CASCIANO: And is one of those factors --  
8 five factors public health?

9 MR. CLINE: No, sir. No. There's the cost of  
10 compliance, the nonair quality environmental benefits.  
11 What else? The remaining useful life of the plant, the  
12 air control technologies that are installed on the plant  
13 currently, and the visibility improvements that would be  
14 gained by any BART.

15 MR. CASCIANO: Okay.

16 MS. RYAN: Sorry. I have one more.

17 In your familiarity with up-and-coming  
18 technologies, obviously, right now we're looking at SCR  
19 and SNCR.

20 Is there -- do you expect that in five years,  
21 when our Board is required to revisit SIP for regional  
22 haze, that there would be more technology for us to look  
23 at at that time? Or are you familiar -- are you  
24 supposing?

25 I know that's a big guess.



1 MR. CLINE: Yeah. I -- I would have to not  
2 venture on that. I don't really get into a lot of the  
3 technical control technologies as much, and it's more in  
4 the legal aspects.

5 MS. ORTH: Member Fulfer.

6 MR. FULFER: I have one question on the EPA  
7 calculations.

8 Do you feel like they're -- you were talking  
9 about them being flawed in certain ways, but one of them  
10 is -- I'm curious if they figured in the retrofit versus  
11 new construction, which retrofit is usually a higher  
12 cost? Do you feel like they based that just on new  
13 construction?

14 MR. CLINE: No, sir, I don't. I think the  
15 intent was to quantify cost for a retrofit. And as was  
16 discussed the other day, they are heavily married to  
17 EPA's OAQPS Cost Control Manual, and that's kind of  
18 their Bible. And for the most part, if the cost  
19 analysis in these factors aren't in that manual, they're  
20 somehow deemed not relevant.

21 For my money, I would rather take the cost  
22 estimate of an engineering design firm that does that  
23 for a living, who has to stand behind that cost estimate  
24 if they're selected to build a plant.

25 MS. ORTH: Anything else?

1 Anything else at all before we excuse  
2 Mr. Cline?

3 Thank you very much, Mr. Cline.

4 MR. ROYBAL: Madam Hearing Officer, we'd call  
5 Norman Benally as our next witness.

6 NORMAN BENALLY  
7 having been first duly sworn or affirmed, was  
8 examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. ROYBAL:

11 Q. Mr. Benally, you've been sworn in.

12 Did you prepare prefiled written testimony in  
13 this case?

14 A. Yes, I did.

15 Q. And have you had the opportunity to review  
16 that testimony? Do you have any corrections or  
17 additions?

18 A. I don't have any.

19 Q. Could you tell us a little bit about your  
20 background and credentials?

21 A. Sure. I haven't been -- I've been employed  
22 with BHP Billiton since 1972. I was originally hired on  
23 as a janitor back in 1972. Some of the past positions  
24 that I've held are the manager of human resources, the  
25 superintendent of governmental affairs, labor relations

1     advisor, front line supervision, and then was a  
2     bargaining unit member for the 11 years with the  
3     International Union of Operating Engineers Local 953.

4             I am currently the head of external affairs  
5     for BHP Billiton New Mexico Coal.

6             MR. ROYBAL: We'd move the admission of  
7     Mr. Benally's testimony in this case.

8             MS. ORTH: All right.

9             Thank you.

10            Objections?

11            Hearing none, admitted.

12            Thank you.

13            (Exhibit SJCC A admitted into evidence.)

14            Q.     (BY MR. ROYBAL) Mr. Benally, could you  
15     summarize your testimony for the Board?

16            A.     Sure.

17            Mr. Roybal, before I do, though, I just want  
18     to thank the Board for being here in New Mexico, and I  
19     am Salt Clan. My mom was Salt Clan. My father was Red  
20     Running Into Water Clan. So I introduce myself as being  
21     Salt Clan first and Red Running Into Water Clan second.  
22     And my maternal grandfathers are Folded Arms Clan, and  
23     my paternal grandfathers are also Folded Arms Clan, as  
24     well.

25            But I'm here to offer testimony on behalf of

1 San Juan Coal Company, which is a subsidiary of New  
2 Mexico Coal. In return, New Mexico Coal is wholly-owned  
3 by BHP Billiton.

4 The company operates San Juan Mine, which is  
5 an underground mine operating on federal land and state  
6 land here in Northwest New Mexico. We also operate  
7 Navajo Mine, which is a surface coal mine that's located  
8 within the exterior boundaries of the Navajo Nation.

9 San Juan Mine sells coal to the San Juan  
10 Generating Station that is operated by public service of  
11 New Mexico. As a result, we are a very significant  
12 stakeholder in the future and the sustainability of San  
13 Juan Generating Station.

14 As a -- as a company, we support New Mexico  
15 Environmental Department's proposal for San Juan  
16 Generating Station to establish the Best Available  
17 Retrofit Technology to regulate nitrogen oxide and  
18 particulate matters.

19 We are concerned over a recent US  
20 Environmental Protection Agency proposal that would  
21 establish BART for San Juan Generating Station, and we  
22 believe the State of New Mexico is in the best position  
23 to establish BART for the San Juan Generating Station.

24 My testimony pertains to the socioeconomic  
25 benefits and impacts of our operation on the State of

1 New Mexico, San Juan County and the Navajo Nation.

2 In several ways, I'm really an example of what  
3 the energy industry can bring to the Navajo Nation. As  
4 I indicated, I started when I was 20 years old with BHP  
5 Billiton, and have enjoyed an employment. I've been  
6 able to obtain a bachelor's of science degree in  
7 business administration from the University of Phoenix  
8 for which the energy industry, BHP Billiton paid  
9 75 percent of my continuing education.

10 In calendar year 2010, New Mexico Coal  
11 employed 1,038 people at our San Juan and Navajo Mine  
12 operations, with a total payroll of approximately  
13 \$93 million. Our workforce is 63 percent Native  
14 American. We account for nearly 3 percent of employment  
15 in San Juan County.

16 We are a significant contributor to the local  
17 and state economy. Our bargaining unit miners are  
18 represented by Local 953 of the International Union of  
19 Operating Engineers. We are currently the largest  
20 private employer in San Juan County and the Navajo  
21 Nation. And as you know, the Navajo Nation -- the  
22 unemployment rate exceeds 50 percent.

23 In calendar year 2010, our New Mexico Coal  
24 operations paid state, local, tribal, federal taxes and  
25 royalties of over \$116 million, which equates to \$8.62

1 per ton, plus state and federal income taxes. In  
2 addition, we spent over \$150 million on equipment,  
3 services and supplies for our two mines.

4 The San Juan Mine currently employs  
5 approximately 529 employees with a total payroll of  
6 \$46 million. In calendar year 2010, San Juan Mine paid  
7 state, local, tribal, federal taxes and royalties for  
8 approximately \$49 million, plus state and federal income  
9 taxes. This includes approximately 24 million in New  
10 Mexico taxes and nearly 11 million in royalties to New  
11 Mexico.

12 As a company, we are committed to sustainable  
13 development, and we strive to be a business that is  
14 actively creating a positive legacy in our community.  
15 We are a major contributor to both the San Juan United  
16 Way and the Navajo Way campaigns.

17 We were the first \$1 million donor to the San  
18 Juan United Way's 50-year history. And this was  
19 repeated again in 2011. In July of 2009, BHP Billiton  
20 established a community investment fund program which  
21 resulted in \$383,000 being awarded to 34 deserving  
22 nonprofit organizations.

23 And I thank you for once again for coming to  
24 our neck of the woods.

25 MR. ROYBAL: We offer the witness for

1 questions.

2 MS. ORTH: Thank you.

3 Mr. Grantham?

4 MR. GRANTHAM: No questions.

5 MS. ORTH: Mr. Alvidrez?

6 MR. ALVIDREZ: No questions.

7 MS. ORTH: Mr. Rose?

8 MR. ROSE: No questions.

9 MS. ORTH: Anyone else?

10 Board members, do you have questions of  
11 Mr. Benally?

12 Any reason not to excuse him?

13 No?

14 Thank you very much, Mr. Benally.

15 MR. ROYBAL: Again, we thank the Board for  
16 attending this hearing and coming to San Juan County.

17 MS. ORTH: Thank you.

18 Let me ask at this point if there's anyone  
19 else who would like to make nontechnical public comment.  
20 This is the last opportunity.

21 Ma'am.

22 We're asking commenters to come to the same  
23 spot.

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MARGARET MC DANIEL

having been first duly sworn or affirmed, was  
examined and testified as follows:

DIRECT TESTIMONY

THE REPORTER: State and spell your full name,  
please.

MS. MD DANIEL: Margaret McDaniel,  
M-A-R-G-A-R-E-T M-C-D-A-N-I-E-L.

THE REPORTER: Thank you.

MS. MC DANIEL: Members of the EIB Board, I  
respectfully ask for your attention for a couple of  
minutes.

I am the executive director of San Juan  
Economic Development Service, a nonprofit economic  
development group here in San Juan County, representing  
the Cities of Aztec, Bloomfield, Farmington and the  
remainder of San Juan County.

Our mission is to assist and lead the way in  
retention, expansion, creation and recruitment of  
economic-based companies into this area for purpose of  
creating high-wage jobs. Our Board consists of all the  
decision-makers, the mayors, the city managers, as well  
as private sector folks from throughout San Juan County.

And before me, I have a packet of a letter  
stating our request to support the state SIP plan. I

KATHY TOWNSEND COURT REPORTERS

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1 also have a resolution signed by the members of the  
2 board of directors in support of this plan.

3 While I have this letter with supporting  
4 documentation, I would like to just speak freely for a  
5 couple of minutes and tell you that as -- as a member of  
6 this community, also serving as a county commissioner  
7 for District 2, and as an executive director of SJEDS,  
8 it is our understanding that there are so many issues in  
9 this county that affect all of the people here.

10 And none of us, none of us in this county want  
11 dirty water, dirty air or dirty environment. We're all  
12 trying to work together to find balance between job  
13 creation, job saving or -- and people's health and  
14 well-being.

15 So at this point, we really respectfully ask  
16 that you consider this, because we know that we have  
17 lost over 5,000 jobs in this area in the last couple of  
18 years, and while the loss of jobs and dollars seem --  
19 seem kind of hard and cold in -- compared to people's  
20 health or even the -- even the visibility, the haze  
21 issue here, it's a matter of working together to find  
22 some kind of balance, that we can all work together and  
23 live together in this beautiful area and find a way to  
24 enjoy our environment, as well as keep our people  
25 employed.

1           And so with that, I'd like to leave you with  
2   this packet of information and respectfully ask that you  
3   accept it and consider our -- our support of the SIP.

4           MS. ORTH:   Thank you.

5           Please bring it up here.

6           Is there anyone else who would like to make  
7   nontechnical public comment?

8           Sir.

9           MR. ROGERS:   My name is Joe Rogers.

10          THE REPORTER:   Would you raise your right  
11   hand.

12                           JOE ROGERS

13          having been first duly sworn or affirmed, was  
14          examined and testified as follows:

15                           DIRECT TESTIMONY

16          THE REPORTER:   Now, please state and spell  
17   your name.

18          MR. ROGERS:   Joe Rogers, R-O-G-E-R-S.

19          THE REPORTER:   Thank you.

20          MR. ROGERS:   Definitely nontechnical.

21                 I started working at the Four Corners Power  
22   Plant in probably February of 1974 and worked there  
23   until last year.   And one thing I know for certain is,  
24   you know, when you get up on top of the units, you can  
25   see San Juan Station from the Four Corners plant, and

1     you can see all around the area.

2             In '74, the visibility was a lot better than  
3     it is now, but the only thing that's really changed in  
4     that time was the power plants are probably -- between  
5     the two power plants, they probably put in billions of  
6     dollars worth of pollution control equipment. And so, I  
7     mean, they made a major effort in what it takes to  
8     control our visibility. And that's what this is about,  
9     visibility.

10            And so I would say unequivocally that the  
11     power plants aren't the main source of pollution that is  
12     impacting visibility.

13            Second item was I appreciate the Board's  
14     efforts in this. I think they're making the best of a  
15     really bad situation, and I think it is a state's rights  
16     issue. I think you guys need to have control of this,  
17     and encourage you to stick with it and make sure that we  
18     deal with this as a visibility issue, not a health  
19     issue.

20            I guess my third comment would be I've been in  
21     constant contact with our -- our two senators and  
22     Congressman Lujan over this issue continually, and it  
23     does not look like they have any intention of stepping  
24     in and helping EPA make the decision to give this back  
25     to the New Mexico Board.

1           So I would encourage everybody to contact the  
2 senators and Lujan in particular and make sure that they  
3 step in and support New Mexico in taking this from --  
4 back from the EPA.

5           Thank you.

6           MS. ORTH: Thank you, Mr. Rogers.

7           Is there anyone else who would like to make  
8 public comment?

9           Sir.

10                               JOSH ORTEGA  
11           having been first duly sworn or affirmed, was  
12           examined and testified as follows:

13                               DIRECT TESTIMONY

14           THE REPORTER: State and spell your full name,  
15 please.

16           MR. ORTEGA: Josh Ortega, O-R-T-E-G-A.

17           THE REPORTER: Thank you.

18           MR. ORTEGA: Thank you.

19           Ladies and gentlemen of the Board, I'm a  
20 member of the International Union of Operating Engineers  
21 Local 953, and I'm also an underground coal miner. I am  
22 but one of the several hundred coal miners that are  
23 employed with the responsibility of providing fuel to  
24 San Juan Generating Station. We are productive members  
25 of our community, and we contribute economically to this

1 region.

2           The impact of these proposed regulations will  
3 have profound effect upon the economy of this area. If  
4 the power plant and coal mines are regulated out of  
5 business, five or ten years from now, maybe sooner, this  
6 community will look nothing like it does now. And as to  
7 your comments earlier, the riverwalks and things of that  
8 nature have been provided due to the economic impact of  
9 the San Juan Generating Station and BHP.

10           According to the American Lung Association's  
11 Annual State of the Air report, Farmington consistently  
12 ranks as one of the cleanest clean air cities in the  
13 United States.

14           As a resident of this area and working to rear  
15 a family here, I am concerned about the environment, and  
16 I strive to lessen my family's effect upon the local  
17 environment. But as a responsible father, I have to  
18 consider the economic impacts of these choices upon my  
19 family.

20           The Federal Implementation Plan will place an  
21 undue economic hardship upon the already struggling  
22 citizens of this great state and threaten the very  
23 livelihood of the local residents.

24           The New Mexico implementation plan balances  
25 cost and economic impacts with significant environmental

1 improvements. By utilizing our State Implementation  
2 Plan, we will provide the residents of this community  
3 and our state an opportunity to succeed in a struggling  
4 economy.

5 Ladies and gentlemen, thank you for your time.

6 MS. ORTH: Thank you, Mr. Ortega.

7 Anyone else?

8 Is Lucinda Bennalley here or --

9 LUCINDA Y. BENNALLEY

10 having been first duly sworn or affirmed, was  
11 examined and testified as follows:

12 DIRECT TESTIMONY

13 THE REPORTER: State and spell your full name,  
14 please.

15 MS. BENNALLEY: Lucinda, L-U-C-I-N-D-A, Y.  
16 Bennalley, B-as-in-boy-E-N-N-A-L-L-E-Y.

17 THE REPORTER: Thank you.

18 MS. BENNALLEY: Good morning, ladies and  
19 gentlemen of the State of New Mexico's Board,  
20 Environmental Board.

21 My name is Lucinda Yellowman Bennalley, and  
22 I'm the president of the local chapter. I don't know  
23 how many of you are familiar with the chapters of the  
24 Navajo Nation. They're like small county governments.  
25 And I've been a chapter president for over 20 years.

1           And I'm also a retired educator, having last  
2       worked as a guidance counselor in a public school, at  
3       Kirtland Central. Yea, Broncos. And my primary job  
4       there was to make sure that the students had a plan to  
5       get a high school diploma and then go on beyond that.  
6       And we and the other counselors -- it was our priority  
7       to make sure that these students went on to get skilled,  
8       to be able to have jobs.

9           And we are very fortunate where we live here  
10      in Northwest New Mexico to have these companies close by  
11      so our children can go on to school, get skilled and  
12      come back and stay in the community and work in a  
13      well-paying job.

14          And we're thankful we have a community college  
15      at San Juan to provide these programs that are needed  
16      for jobs here in the area. And we are also thankful to  
17      the companies that have provided their funds for the  
18      School of Energy to -- to provide programs that are  
19      appropriate for -- for the local companies and the  
20      positions that are available there.

21          And as a member of the Nenahnezad Chapter, we  
22      always claim that we're closest to Hesperus Mountain,  
23      which, of course, the Navajos consider as one of the  
24      sacred mountains, and historically, all that land up to  
25      Hesperus was Navajo Nation, before the US bought it out,

1 or bought it back or took it back.

2 Because my dad used to say, "Well, we used to  
3 herd our sheep all the way to the foothills, and there  
4 was our summer camp."

5 And it was like, man, why didn't we keep it?

6 But anyway, because we didn't keep it, we have  
7 thousands, probably, counting all the people that are  
8 employed at PNM and BHP and the contractors, they're  
9 able to have jobs, and which improves their quality of  
10 life, and enabling our -- our Navajo Nation to have a  
11 better quality of life than what's on the rest of the  
12 nation.

13 And I am asking that on behalf of our  
14 community, whatever needs to be done to -- to assist PNM  
15 to continue operating, providing jobs, providing  
16 scholarships, summer jobs, and, of course, most  
17 important, the royalties and taxes that go to the whole  
18 State of New Mexico, and to the Navajo Nation and other  
19 tribes.

20 And we feel that as -- as indigenous people,  
21 we are responsible stewards of the land. We feel that  
22 the creator has blessed us with the type of land that  
23 was given to us to live on, at some point a hundred or  
24 so years ago. However, we were blessed that there's a  
25 lot of natural resources, and we did not benefit only as



1 a tribe by ourselves, but we were able to -- our  
2 neighbors are able to benefit from it, too.

3 So -- and I always say, "When you were coming  
4 in, you probably saw the beautiful mountains." And I  
5 said that to the EPA folks about a month ago or so.

6 They said, "Yes, we did."

7 Okay. Where's the haze? There is no haze.  
8 Yesterday there was. I don't know where that came from.  
9 I think it's blowing from the coast or something. But  
10 you couldn't hardly see, and it was awful. Now, that's  
11 haze. And that's what our elders say. If you're  
12 talking about pollution, you're talking about what you  
13 see in LA. There's no pollution here.

14 So we are in support of that and whatever  
15 needs to be done to assist PNM. And of course, if  
16 anything should happen negatively to cause that plant to  
17 shut down, it will affect all -- the whole county and  
18 the whole state, probably the whole nation.

19 And again, I say we are fortunate that our  
20 children and our people are able to stay close to home  
21 to have good jobs, although there are a number of them  
22 that have to travel to different contracts throughout  
23 the United States to -- to have well-paying jobs.

24 So -- and another thing I wanted to say was --  
25 I had mentioned to EPA people that maybe something

1 should be done to collaborate with the United Nations,  
2 maybe some global watchdog organization to address this  
3 pollution.

4 I don't think that our plants, our pollution,  
5 all this global warming pollution, because there's no  
6 regulation. Nobody looks out for the power plants that  
7 are unregulated in China, and all that drifts over to  
8 us. Now we're experiencing all the weather changes  
9 because of what happened in Japan.

10 So we are just trying to provide for our  
11 community, for our United States of America, and our  
12 people proudly served as veterans, calling the US our  
13 mother. That was one of the words in the Code Talkers'  
14 vocabulary.

15 So with that, I thank you for the time to be  
16 able to make these comments.

17 MS. ORTH: Thank you, Ms. Bennalley.

18 Anyone else?

19 CLAYTON BENALLY

20 having been first duly sworn or affirmed, was  
21 examined and testified as follows:

22 DIRECT TESTIMONY

23 THE REPORTER: Would you state and spell your  
24 full name, please.

25 MR. BENALLY: My name is Clayton Benally,

1 C-L-A-Y-T-O-N, Benally, B-E-N-A-L-L-Y.

2 And I am no relations to Norman Benally or  
3 Lucy Bennalley.

4 I'm here today to urge the Environment  
5 Improvement Board to adopt the State Implementation  
6 Plan.

7 I live in Shiprock. I'm a member of the  
8 Navajo Nation. I get my utility bill through the Navajo  
9 Tribal Utility Authority, the NTUA, if you will. NTUA  
10 buys their electricity from Tucson Electric, which are  
11 part owners in PNM. So any decisions made that affect  
12 PNM also affects the Navajo Nation.

13 And as you know, Navajo Nation goes in New  
14 Mexico, Arizona and Utah. So, you know, the decisions  
15 affect a wide range of people, in a big geographical  
16 area.

17 I worked at PNM, BHP and also on APS on the  
18 construction side of things. Now my job directly -- now  
19 directly affects people that I send out to these  
20 construction jobs. I'm also a member of the  
21 International Union of Operating Engineers Local 953.

22 And I have a lot of friends and a lot of  
23 family -- some family and a lot of coworkers that are  
24 directly affected by any decisions made toward PNM, BHP  
25 or even APS. You know, the friends and family, they

1 maintain a good living, maintain good benefits working  
2 at these sites.

3           The latest concerning PNM is they've abided by  
4 all the rules and restrictions made by the EPA, you  
5 know, the latest being the 2009 baghouse projects in  
6 which I had a lot of coworkers, associates working out  
7 there. You know, we bent over backwards to abide by the  
8 restrictions that seem to be ever changing concerning  
9 these industries.

10           Every job at APS, PNM and BHP have an economic  
11 multiplier which directly affects the community in  
12 general, the local businesses, as well as our children  
13 and our school districts and stuff. And so, you know,  
14 any -- any decision that's made affects a wide range of  
15 people.

16           In worst case scenario, if the restrictions  
17 are too bad, the plants shut down, it's going to affect  
18 a lot of people. A lot of people are going to be out of  
19 jobs, and things aren't going to look good.

20           And there's a big push toward green energy,  
21 but one question I want to pose to you is where are you  
22 going to get your electricity if the wind's not blowing  
23 and the sun's not shining?

24           I want to thank you for your time, and please  
25 adopt the State Implementation Plan.

1 Thank you.

2 MS. ORTH: Thank you, Mr. Benally.

3 Is there anyone else who would like to make  
4 nontechnical public comment at this time?

5 This is the last opportunity.

6 Yes.

7 MS. FALK: Hi.

8 MS. ORTH: I'm sorry. Wait for her first, but  
9 I'll take you next.

10 MS. FALK: Oh, okay.

11 MS. ORTH: You can both be sworn in.

12 (EUGENIA QUINTANA and CONSTANCE LUIS FALK were  
13 duly sworn or affirmed.)

14 THE REPORTER: Would you state and spell your  
15 full name, please.

16 MS. QUINTANA: Eugenia Quintana, E-U-G-E-N-I-A  
17 Q-U-I-N-T-A-N-A.

18 THE REPORTER: Thank you.

19 And your name, please.

20 MS. FALK: My name is Constance Louise Falk,  
21 F-A-L-K.

22 THE REPORTER: Thank you.

23

24

25

1 EUGENIA QUINTANA

2 having been first duly sworn or affirmed, was  
3 examined and testified as follows:

4 DIRECT TESTIMONY

5 MS. QUINTANA: My name is Eugenia Quintana.  
6 I'm the environmental department manager for the Navajo  
7 Nation Environmental Protection Agency. It's an office  
8 within the executive branch of the Navajo Nation. And  
9 I'm here on behalf of the Navajo Environmental  
10 Protection Agency to offer some comments.

11 I wanted to say that the Navajo Nation is  
12 supportive of New Mexico's proposed revisions to the  
13 State Implementation Plan for regional haze. New Mexico  
14 has their own authority to develop SIP for their  
15 jurisdiction, and we support New Mexico doing that,  
16 especially when New Mexico has a better understanding of  
17 the regional context and how to weigh the complete  
18 considerations in that regard.

19 Why is the Navajo Nation interested?

20 The Navajo Nation is -- is home to about  
21 280,000 Navajo people. The Navajo Nation covers more  
22 than 27,000 square miles within the exterior boundaries  
23 of Arizona, New Mexico and Utah. It also occupies 13  
24 counties in those states, and it is a place of great  
25 scenic beauty.

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1           There is little economic development on the  
2 Navajo Nation, and Navajo people who live there are the  
3 poorest -- among the poorest in the US. 48 percent are  
4 unemployed, and 40 percent are below the federal poverty  
5 line.

6           Our living conditions are substandard compared  
7 to the rest of the United States. 31 percent of Navajo  
8 homes do not have complete plumbing. 28 percent do not  
9 have operational kitchen facilities. 30 percent do not  
10 have water services. 32 percent are without  
11 electricity. 86 percent do not have natural gas  
12 services. 60 percent of homes do not have telephone  
13 services.

14           The Navajo Nation's most valuable and saleable  
15 natural resource are its coal reserves. The Navajo  
16 Nation is dependent on coal. They have been so for many  
17 years, and we so are very much dependent on coal.

18           The two power -- there are two power plants on  
19 the Navajo Nation, the Four Corners Power Plant and the  
20 Navajo Generating Station. These two power plants were  
21 specifically planned for and located exactly where they  
22 are to provide for and sell coal and provide a market  
23 for Navajo coal.

24           The income from Four Corners and Navajo  
25 Generating Station provide many direct and indirect

1 contributions to the Navajo Nation. These indirect and  
2 direct contributions are substantial to the Navajo  
3 Nation's economic viability, including the health and  
4 welfare of the Navajo people and to the sustainability  
5 of the Navajo Nation as an independent sovereign nation.

6 The San Juan Generating Station and the  
7 supplying mine, the San Juan Mine, also contribute to  
8 the regional economy and provide hundreds of jobs to  
9 Navajo workers, contractors and subcontractors.  
10 Approximately 22 percent of San Juan Generating Plant  
11 workers are Navajo, and about 45 percent of the San Juan  
12 Mine workforce are also Navajo -- Navajo tribal members.

13 The Navajo Nation is situated where three  
14 power plants are located. And I just named those, the  
15 Four Corners Power Plant and the Navajo Generating  
16 Station, including the San Juan Generating Station. All  
17 three power plants contribute to the Navajo Nation  
18 economy, and all three power plants and their supplying  
19 mines contribute to the tribal economy and the regional  
20 economic dynamics.

21 I would also like to mention that there are  
22 also additional emission sources, both major and minor  
23 sources, within the region, that all contribute in  
24 varying percentages to emissions, and these aren't just  
25 emissions from the power plants.



1           The Navajo Nation also recently expressed  
2 concerns to USEPA Region 6 regarding USEPA's proposed  
3 BART for San Juan Generating Station. The proposed EPA  
4 BART determination has implications for the Navajo  
5 Nation tribal trust interests.

6           Although the San Juan Generating Station is  
7 located outside the jurisdiction of the Navajo Nation,  
8 it is nevertheless a facility with significant impacts  
9 on both the Navajo Nation and the regional economy.

10           Some of the positive impacts of the San Juan  
11 Generating Station that we hear quite frequently are PNM  
12 scholarships and the contributions to nonprofit  
13 organizations that use the contributions to address  
14 issues within their own specific communities.

15           The BART determination proposed for San Juan  
16 Generating Station, including NGS and Four Corners --  
17 I'm sure the Board members are aware that USEPA is also  
18 proposing BART for two power plants on the Navajo  
19 Nation, for Four Corners and for NGS. USEPA Region 9 is  
20 planning to propose BART for NGS sometime this summer.  
21 They have recently taken comments on BART for Four  
22 Corners.

23           BART determinations for all these three power  
24 plants within one to two years time frame could have  
25 significant impacts to the Navajo Nation, particularly

1 to the Navajo workforces at each of these plants. The  
2 subsequent rippling effect has the potential to exact  
3 exponential detrimental impacts if BART determinations  
4 result in exorbitant costs for compliance and too  
5 stringent compliance scheduling.

6 We have also been concerned over USEPA's  
7 proposed compliance scheduling for San Juan Generating  
8 Station. It requires installation of SCR on all units  
9 within three years of promulgation of the EPA BART FIP  
10 for San Juan Generating Station, while the Regional Haze  
11 Rule actually allows for five years for compliance.

12 I also wanted to interject and highlight that  
13 the closure of the Mohave Generating Station on the  
14 western side of the Navajo Nation is directly  
15 attributable to similar USEPA rulemaking. Closure of  
16 Mohave, in turn, resulted in the closure of the Black  
17 Mesa mine and the loss of significant royalty revenues  
18 to the Navajo Nation.

19 While San Juan Generating Station is not  
20 burning down with coal, there still are considerable  
21 regional economic effects which cumulatively would  
22 dramatically impact the Navajo Nation if the San Juan  
23 Generating Station were forced to close because of the  
24 proposed USEPA BART rulemaking.

25 A comment about health. The Navajo Nation is

1 concerned about health, both on the Navajo Nation and  
2 regionally. However, BART that is being proposed for  
3 San Juan Generating Station is supposed to be about  
4 visibility, not about health, and in the context of our  
5 concern about health, we have specifically asked USEPA  
6 Region 6 to consider pursuing health studies in  
7 collaboration with the Navajo Nation, New Mexico and  
8 other stakeholders, so we can get a better idea of the  
9 baseline data that we can use to perhaps model and  
10 further analyze and make some better assumptions about  
11 the direct impacts of the major sources upon the health  
12 of people in the region.

13 In conclusion, the Navajo Nation is supportive  
14 of New Mexico's proposed revisions to the State  
15 Implementation Plan for regional haze because the  
16 existing and proposed SNCR controls on all the units  
17 will achieve reasonable progress in order to meet the  
18 visibility goals of the Regional Haze Rule by 2064.

19 That's it.

20 MS. ORTH: Thank you, Ms. Quintana.

21 Ms. Falk.

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CONSTANCE LOUISE FALK

having been first duly sworn or affirmed, was  
examined and testified as follows:

DIRECT TESTIMONY

MS. FALK: Hi.

I'm planning to move to this community within  
the next couple of years. I bought a home here. I'll  
be retiring. I'm a professor of agriculture and  
economics at New Mexico State University.

And of course, I'm very concerned about  
potential to my own health to moving into a region  
that -- as I understand it -- I'm not well informed,  
but as I understand it, it's -- these power plants  
produce some of the greatest amounts of air pollution  
than any power plants in the country.

And if I'm not mistaken in that understanding,  
then my perspective on that is that this community has  
been then -- been allowed to be kind of a sacrifice zone  
for whatever particular interests are behind that.

And I understand the Navajo Nation's concern  
about jobs, and certainly we can quantify the loss of  
those jobs, and maybe that's why we tend to make  
decisions based on those jobs, and we don't quantify the  
externalities associated with a lot of pollution. We  
don't quantify. And even the person that came before me

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1 said that we should study the health effects.

2 But we do know that all of these -- this  
3 particulate matter in the air has health effects on  
4 children. And they can't come here and speak to you,  
5 and they can't come here and make their case about their  
6 lifelong problems with breathing and asthma.

7 And so I think that instead of just focusing  
8 on the things that are easily quantified, which are  
9 potential jobs lost, which, in my mind, hasn't been  
10 established, because other power plants in the country  
11 have very easily upgraded.

12 So instead of just concentrating on those  
13 easily quantifiable impacts, we should think more about  
14 the more difficult things to quantify, which are the  
15 externalities associated with widespread health impacts  
16 that this community has long suffered from and that I  
17 fear will also impact me when I move here.

18 And another sort of unquantifiable economic  
19 impact that probably is never really talked about is the  
20 potential to draw many more retirees such as myself to  
21 this community who would be drawn here if they knew that  
22 this was a clean environment and that they could see the  
23 beautiful natural wonders that exist here in this  
24 region.

25 And so those are the kind of the main points

1 that I would hope you consider, is some of those hard to  
2 quantify externalities, and looking at those more  
3 carefully, and not just basing your decision on the  
4 easily quantified potentially loss of jobs.

5 And certainly we know there's lots of  
6 information available about the green energy economy and  
7 how more jobs can be created through that than the  
8 number of jobs that would be lost in the old way.  
9 They're going to go by the wayside anyway.

10 We know that the fossil fuel era has to come  
11 to an end, it will come to an end, and so why not bring  
12 it to an end in a way that's rational and makes a  
13 transition to a clean energy economy and one that  
14 provides jobs here at San Juan College. They have an  
15 internationally known program in green energy, and  
16 there's no reason why that program can't be extended to  
17 the Navajo Nation to train lots of people in green  
18 energy jobs.

19 Thank you very much.

20 MS. ORTH: Thank you, Ms. Falk.

21 Is there anyone else?

22 I see a gentleman.

23

24

25

1 RUDY MOYA

2 having been first duly sworn or affirmed, was  
3 examined and testified as follows:

4 DIRECT TESTIMONY

5 THE REPORTER: Would you state and spell your  
6 full name, please.

7 MR. MOYA: My name is Rudy Moya. I've been in  
8 this area since 1971.

9 I'm a business agent for the laborers union  
10 hall in Farmington. I've worked in the power plant for  
11 many years. You know, most of my members in this area  
12 are hard-working laborers. I got over 400 or 500 people  
13 working, not at work -- not working now. Maybe about  
14 80 percent -- 80 people are working now.

15 When we got these turnarounds, they look  
16 forward to their jobs. And they also like to go for  
17 their pension. We got credits. And a lot of people are  
18 coming from Arizona, Utah, Colorado, just to get these  
19 jobs, and make a good living, and they have a good  
20 pension. And I can see San Juan County going down. San  
21 Juan Power Plant has always provided work for us, and  
22 Four Corners, also.

23 All I can ask on behalf of my members and the  
24 people in Farmington area in -- and the Navajo Nation,  
25 if we can do something about working with the power

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1 plants, you know, if they have to fix something, more  
2 work for the people. That's all I ask for San Juan and  
3 the members in this area.

4 That's it.

5 MS. ORTH: Thank you, Mr. Moya.

6 MR. MOYA: I have a little proposal here for  
7 our area, they may want to look at it.

8 MS. ORTH: Bring it up here, please.

9 Is there anyone else who would like to make  
10 nontechnical public comment?

11 This is the last opportunity before we close  
12 the record.

13 MR. ALVIDREZ: Madam Hearing Examiner, PNM  
14 does have some written public comment that we would like  
15 to submit at this time. It is primarily directed to  
16 some of the public comment with respect to health  
17 effects.

18 I've got a number of copies here --

19 MS. ORTH: Great.

20 MR. ALVIDREZ: -- but it should be sufficient.

21 MS. ORTH: Thank you.

22 Anything else at all before we close the  
23 record?

24 MR. ALVIDREZ: Madam Hearing Examiner, again,  
25 I don't -- certainly don't want to prolong this. PNM is



1 very anxious, of course, to have the Board take action  
2 on this matter.

3 I know that we're dealing with some very  
4 significant technical issues and that the Board has had  
5 an opportunity to certainly review the testimony that's  
6 been filed here, the public comments and also hear the  
7 summary testimony.

8 We do have the representatives from Black &  
9 Veatch here in the event that, you know, through the  
10 course of the evening last night or reviewing the  
11 testimony, any questions came up, we'd be glad to  
12 present them, provide the Board with an opportunity of  
13 some follow-up questions, if they have any.

14 Certainly completely at the discretion of the  
15 Board, but we want to be helpful and provide the Board  
16 with as much information as we possibly can to help them  
17 deliberate and make a decision in this case.

18 I would also ask that the parties be provided  
19 with at least a few minutes -- since we're not going to  
20 have briefing or anything like that in this case, a few  
21 minutes to make some closing comments, as well.

22 That's all I would ask. Thank you.

23 MS. ORTH: All right.

24 Anything -- do you have anything to add,  
25 Mr. Grantham.

1           MR. GRANTHAM: Madam Hearing Officer, the  
2 Department also has our witnesses here today, and we  
3 were of the assumption that there would be an  
4 opportunity for additional questions either by the Board  
5 or some of the public for the Department's technical  
6 witnesses.

7           MS. ORTH: All right.

8           Board, do you have a record upon which you  
9 would like to deliberate, or do you have additional  
10 questions either of the Department panel or the PNM  
11 panel?

12          MS. PEACOCK: I have a question for PNM.

13          MS. ORTH: You do. All right.

14          And would this be from the Black & Veatch  
15 witnesses?

16          MS. PEACOCK: Maybe just Mr. Alvidrez.

17          MS. ORTH: Oh. All right.

18          Let's give it a shot.

19          MR. ALVIDREZ: Certainly.

20          MS. PEACOCK: As you've heard over the last  
21 couple of days, it's likely that the EPA will probably  
22 not adopt the SIP.

23          What is PNM -- well, what is the process that  
24 PNM is going to follow with the -- waiting for the EPA  
25 to say yes or no, and then what will happen?

1           MR. ALVIDREZ: Well, you raised a very good  
2 point, and I'm sure it's one that is heavy on the mind  
3 of the Board members. And I think it's very important  
4 to clarify where the EPA is with respect to this  
5 process.

6           Now, what EPA has done is it has issued a  
7 proposed SIP -- FIP. It is nothing more than a proposal  
8 at this point. It is not final. It's not binding. EPA  
9 is still deliberating on it. It has received over 4,500  
10 comments, as I understand it, with respect to its  
11 proposed BART determination.

12           And so I think that it really kind of  
13 shortchanges the EPA to some extent to think that that's  
14 a done deal. And I want to impress upon this Board that  
15 this Board's action to adopt the NMED proposal will have  
16 a profound effect in Region 6, in Dallas, with respect  
17 to its proposal.

18           Now, the EPA has gone to federal court and  
19 asked for an extension of time in August so that this  
20 Board could act and adopt a State Implementation Plan on  
21 regional haze and the other proceeding that's going to  
22 follow shortly after this with respect to the interstate  
23 transport, so that they can consider this matter and  
24 take action.

25           I can also tell the Board that following the

1 comment period that PNM made, where PNM submitted  
2 comments, that two weeks ago the EPA came to the San  
3 Juan Generating Station, for the first time, by the way,  
4 with respect to the BART analysis, to actually look at  
5 the station, see how it's configured and see whether or  
6 not, you know, the numbers that PNM has submitted  
7 through Black & Veatch make sense.

8           So I don't want the Board to think that this  
9 is a futile effort, that there's, you know, no  
10 significance to what they -- what the Board might do  
11 with respect to the NMED proposal.

12           What I can tell you is that it will have an  
13 impact, that the EPA is going to have to answer some  
14 tough questions. They're going to have to answer why  
15 their economic analysis is so different from the  
16 analysis that the state has approved.

17           And I will tell you that one of the things  
18 that we know of that EPA analysis, it's done by the  
19 book, and that when EPA was looking at the San Juan  
20 Generating Station, all they did was Google it. They  
21 looked at it on a Google map and said, "Oh, yeah."

22           And it's a very different thing when you get  
23 on the ground and actually look at the plant, see how  
24 it's configured, see what the controls are that are on  
25 there, where you have to work and what the costs are

1 involved.

2 So I think that's a very significant issue.

3 The other thing about the EPA proposal is that  
4 I think there's a lot of people that are  
5 misunderstanding. It's a regional haze SIP or regional  
6 haze FIP. It is not.

7 What it is is an interstate transport FIP  
8 that, for whatever reason, EPA decided they wanted to go  
9 ahead and make a BART determination in the context of  
10 that rather than a full regional haze Federal  
11 Implementation Plan. It falls far short and is very  
12 different from what the NMED has proposed, which is a  
13 comprehensive plan.

14 If you read the EPA Federal Implementation  
15 Plan, they readily admit, "We're not even addressing SO<sub>2</sub>,  
16 which is probably the largest contributor of regional  
17 haze. We'll wait, and we'll address that sometime  
18 later."

19 But the package that the NMED has submitted is  
20 a full package. It addresses both the regional haze  
21 requirements, and it also addresses the interstate  
22 transport visibility component. It is the full package.

23 And by the way, as the EPA readily admits,  
24 it's had the state interstate transport SIP pending  
25 before it since 2003 and didn't take action.

1           So there are a lot of tough questions the EPA  
2   is going to have to answer if this Board adopts the NMED  
3   proposal. It really is going to have to address why it  
4   has come to a different conclusion, based on its very  
5   extenuating study, why it shouldn't give deference, as  
6   Mr. Cline suggested, with respect to the state's  
7   determination about what is right for New Mexico and the  
8   region.

9           And so I don't want this Board to go away with  
10  the idea that, you know, this is a fool's errand. It  
11  will be meaningful. It will have an impact that EPA  
12  will have to consider.

13           MS. ORTH: Anything else before we -- yeah.  
14           Member Ryan.

15           MS. RYAN: I do have a question for PNM's  
16  technical witnesses.

17           MR. ALVIDREZ: Certainly.

18           They're -- for the court reporter, it might  
19  be --

20           MS. ORTH: Yes.

21           MR. ALVIDREZ: -- helpful so she can --

22           MS. ORTH: We're recalling for the moment  
23  Ms. Fischer and Mr. Lucas, Black & Veatch panel. They  
24  gave full testimony yesterday.

25           Ms. Fischer and Mr. Lucas, you're still under

1 oath.

2 DIANE FISCHER and KYLE LUCAS

3 having been previously duly sworn or affirmed, were  
4 examined and testified further as follows:

5 FURTHER EXAMINATION

6 BY THE BOARD:

7 MS. ORTH: Member Ryan.

8 MS. RYAN: Yes. Thank you for being available  
9 today for follow-up questions.

10 And this came to me as I was driving to the  
11 San Juan area yesterday from Santa Fe, and the wind was  
12 blowing, seemingly 900 miles an hour. We had dust  
13 blowing everywhere, clouds building. It looked -- rain  
14 in some places. And I saw a haze.

15 And I started to think about what was in the  
16 haze and all of the contributing factors, not only the  
17 pollution, you know, NO<sub>x</sub> and CO<sub>2</sub>, that we've been talking  
18 about, but I was seeing the dirt being blown up like  
19 this, and I was thinking how much of that is dirt -- my  
20 husband and I were discussing it -- how much of that is  
21 dirt, how much of that is NO<sub>x</sub>, how much of that is CO<sub>2</sub>,  
22 and how are we quantifying that and looking at  
23 visibility.

24 And if we're supposed to be looking at  
25 visibility, I'm just -- I am not a scientist, I'm a

1 lawyer, so far cry from, but could you attempt at all --  
2 and in the research that your company did in coming up  
3 with its analysis to take in other variables in the haze  
4 issue for this particular area?

5 Sorry, that's a long question.

6 MR. LUCAS: You asked some very intuitive  
7 questions there.

8 While I can't speak about yesterday, and the  
9 specifics of yesterday --

10 (Discussion off the record.)

11 MR. LUCAS: While I can't speak for  
12 yesterday's specific conditions, I'm from Kansas, and  
13 what it looked like to me was just a dusty, rainy event  
14 on the drive up.

15 Specifically with yesterday, there was a lot  
16 of moisture in the air. And as part of the visibility  
17 analysis, it does take into account moisture variables  
18 and relative humidity. That is one contributing factor  
19 to the visibility component or the visibility equation.

20 The equation also takes into account sulfates  
21 and nitrates. It takes into account various sizes of  
22 particulate matter, organic aerosols and other -- other  
23 pollutants that has gone through various rounds of  
24 studies.

25 And so when we spoke yesterday of the analysis



1 done to look at the baseline conditions at San Juan --

2 MS. RYAN: Right.

3 MR. LUCAS: -- as compared to the conditions  
4 of the additional control technology evaluations, each  
5 of that -- each of those analyses takes into account all  
6 of those variables that are available through the  
7 modeling methodology we proposed through the protocol  
8 document, and looks at it equally through the same  
9 meteorological data.

10 MS. RYAN: Okay.

11 So it all was considered in coming up with  
12 your baseline.

13 MR. LUCAS: All is all inclusive. I'm going  
14 to say --

15 MS. RYAN: Right.

16 MR. LUCAS: -- that within the guidelines  
17 provided to us and the methodology proposed, it was  
18 considered.

19 MS. RYAN: Okay.

20 MS. FISCHER: Kyle, can I ask you a question?

21 When she's talking about dust flying up in the  
22 air, that's called fugitive dust. That's the technical  
23 term for it.

24 Is fugitive dust in that number, or not?

25 MR. LUCAS: There is a value of particulate

1 matter considered at each of the Class I areas, and the  
2 guidelines have published certain values and attributes  
3 various components to that equation that overall come  
4 back into the model and are reviewed through the  
5 baseline to AQC technology review.

6 MS. RYAN: So when we were talking yesterday  
7 about a 2.5 basically visible change, that is only in  
8 application to just the particular technology proposed  
9 by the SIP, and just as to those particular pollutants,  
10 not as to the other variables that contribute to  
11 visibility in this community.

12 MR. LUCAS: The -- it is correct that the 2.5  
13 deciviews was for the SNCR technology. The improvements  
14 gained between baseline and that technology addition on  
15 a facility basis, both between the baseline and the AQC  
16 analysis, the same variables were looked at and used,  
17 the sulfates and nitrates, moisture, particulate matter,  
18 organic aerosols and so forth, to make it on an  
19 equivalent basis, so that you can see the improvements  
20 by looking at each technology option that was chosen to  
21 be feasible.

22 MS. RYAN: Okay.

23 MS. FISCHER: So if I -- I think what you're  
24 asking is does the model kind of throw all those things  
25 that you're talking about into the model before, and

1 then look at if we change something, are all those same  
2 things in the model, and so that the only difference is  
3 the control technology? Is that what you're asking?

4 MR. LUCAS: I should also include that --

5 MS. FISCHER: Is that true? Is the only  
6 difference --

7 MR. LUCAS: Yes. It's --

8 MS. FISCHER: Okay.

9 MR. LUCAS: The only change between the two  
10 are operational characteristics of the equipment and the  
11 machinery and so forth.

12 Additionally, when we're building a database  
13 to run in the model, we do take into account a  
14 three-dimensional meteorological field, we take into  
15 account precipitation data, we take into account ozone  
16 data, ammonia data that's available. So there are other  
17 pieces that go into the -- the base model that we look  
18 at.

19 MS. RYAN: That answers my question.

20 Thank you.

21 MS. ORTH: Other questions of the Black &  
22 Veatch panel?

23 Member Fulfer.

24 MR. FULFER: Only what is your baseline year  
25 that you're using? Is it from 2005? 2009?

1           MR. LUCAS: Since there was so much  
2 complicated data that goes into the model, the database  
3 was the years 2001, '2 and '3, and that is the  
4 standardized data set that is typically used in this  
5 area. And certain different areas of the country have  
6 different data sets that they use. This is one that was  
7 proposed within the methodology.

8           MR. FULFER: So are you able to take into  
9 account some of the retrofit that they've done before?

10          MR. LUCAS: The meteorological was  
11 standardized for both the baseline condition as well as  
12 the AQC analyses. Within the baseline condition, the  
13 operational characteristics of the plant included the  
14 consent decree controls that were discussed earlier, the  
15 \$320 million of add-ons between 2005 and 2009. So it  
16 takes into account those additional NO<sub>x</sub> combustion  
17 controls and chose operational characteristics as part  
18 of that baseline.

19          MS. FISCHER: So we took the '01 to '03 data,  
20 which didn't have the consent decree stuff in, we  
21 modeled that, and then we modeled it with the consent  
22 decree stuff on it, and then we modeled it with the  
23 additional items that we looked at for BART. So there  
24 were kind of three steps because of that situation.

25                 Is that what you're asking?

1 MR. FULFER: Yeah.

2 MS. RYAN: Can you address the first baseline  
3 model that you came up from 2001 to 2003 to the -- when  
4 the new retrofit technology was implemented at the  
5 plant?

6 MR. LUCAS: What was submitted as part of the  
7 SIP was the consent decree controls, we call it the  
8 2005, and the AQC technology, that's NCR. Previously,  
9 we also looked at -- outside of that analysis the  
10 preconsent decree controls to the consent decree and the  
11 visibility gained from less NO<sub>x</sub> control, which was -- I'm  
12 not -- I don't have the specific number. I think it was  
13 about a .4 pound per million NO<sub>x</sub> -- I might be mistaken  
14 on that -- down to that .3 from the consent decree.

15 MS. RYAN: Okay.

16 MR. LUCAS: So we looked at that emission  
17 reduction, and that had some visibility improvement.  
18 And then we looked for the purposes of BART, the  
19 reduction that we would see from the consent decree at  
20 the .3 level, down to the .23 level with SNCR. The .23  
21 level is the presumptive level --

22 MS. RYAN: Right.

23 MR. LUCAS: -- for this type of boiler and  
24 this type of fuel.

25 And so what you see at that .25 is just the

1 period -- or the betterment of the consent decree or our  
2 baseline to the SNCR technology. As we discussed  
3 yesterday, it's a cumulative effect at each of the Class  
4 I areas.

5 If you were to look at it that way, you could  
6 say that between the uncontrolled San Juan Generating  
7 Station before the consent decree --

8 MS. RYAN: Right.

9 MR. LUCAS: -- to the SNCR control, you would  
10 have an additive at each Class I area --

11 MS. RYAN: Right.

12 MR. LUCAS: -- of San Juan's benefit of going  
13 to that -- let's say .4 --

14 MS. RYAN: Okay.

15 MR. LUCAS: -- don't quote me on that  
16 number -- but to the .23.

17 MS. RYAN: Okay.

18 MR. LUCAS: You'd have that additional which  
19 is not part of the .25 --

20 MS. RYAN: Um-hum.

21 MR. LUCAS: -- to the consent decree.

22 MS. RYAN: Okay.

23 MR. LUCAS: To help you illustrate --  
24 visibility is a hard -- hard concept when you're looking  
25 at deciviews and how much you would actually achieve.

1           As part of the hearing that happened a couple  
2 of months ago, the -- some graphics were produced.  
3 These are the wind haze program. It's available as a  
4 freeware off the National Park Service web site. Within  
5 that, you look at specific Class I areas. And each has  
6 specific background conditions.

7           What was done was that the various control  
8 technology scenarios, the precontrolled, controlled and  
9 SNCR, SCR, were looked at and overlaid on a  
10 representative Class I area.

11           These graphics that we have here are  
12 representative -- we'll call it Mesa Verde. The  
13 software doesn't have graphics for Mesa Verde as a Class  
14 I area. The Colorado SIP used something very similar,  
15 but they used Canyonlands as representative due to  
16 similarities in topography.

17           So what we have done is overlaid those various  
18 scenarios as far as what visibility would look like as a  
19 change between one scenario and another scenario over  
20 Canyonlands. And these might help illustrate or may  
21 have -- bring up other questions you -- that you may  
22 have but.

23           MS. RYAN: Yes. Thank you.

24           MR. LUCAS: This might be helpful.

25           MR. ALVIDREZ: And I would note these are in

1 the record. They are attached as exhibits to  
2 Mr. Themig's testimony. It's actually PNM's comments to  
3 the EPA. It's EJT Exhibit 2, and this is Appendix 5.

4 But this is a very good illustration of --  
5 this is what -- this is a depiction of the area before  
6 any control, before the San Juan upgrades that we've  
7 talked about.

8 This is a picture of after the upgrades have  
9 been made, the \$320 million have been spent.

10 And this is a picture of what you would get  
11 after you spend a billion dollars. So what we're  
12 talking about is a difference between this picture and  
13 this picture for a billion dollars.

14 MR. BRYCE: Can you show those to the  
15 audience, also?

16 MR. ALVIDREZ: Absolutely.

17 MS. FISCHER: I feel a little like Vanna.

18 MR. ALVIDREZ: And these pictures are screen  
19 captures right off of the National Park Service web  
20 site. You can go and look -- independently verify and  
21 put in the deciview changes yourself and confirm.

22 You know, but our conclusion was there's not a  
23 whole lot of difference for a billion dollars.

24 MR. VOLKERDING: And then do you have a  
25 picture with the state BART?



1 MR. ALVIDREZ: We don't have a picture --

2 MR. VOLKERDING: Okay.

3 MR. ALVIDREZ: -- of the SNCR.

4 MR. LUCAS: But it would be less --

5 MR. VOLKERDING: Right. It would be in  
6 between. I just -- yeah.

7 MR. LUCAS: So yesterday when we were speaking  
8 of that one deciview is about a 10 percent change and  
9 trying to kind of understand that change, this is the --  
10 probably the closest illustration we might be able to  
11 provide.

12 MS. RYAN: That was helpful. Thank you.

13 MS. ORTH: Other Board questions?

14 No.

15 Is there any cross-examination based on that  
16 testimony?

17 MR. GRANTHAM: No. No questions.

18 MS. ORTH: All right.

19 Anything else, Mr. Alvidrez?

20 MR. ALVIDREZ: Yes. If I could, just a  
21 follow-up question.

22 FURTHER DIRECT EXAMINATION

23 BY MR. ALVIDREZ:

24 MR. ALVIDREZ: With respect to the haze that  
25 you -- I assume you drove up yesterday and saw the haze,

1 as well --

2 MR. LUCAS: Yes, I did.

3 MR. ALVIDREZ: -- like Board Member Ryan has  
4 referred to.

5 And in terms of that haze, is that what you  
6 saw consistent with a NO<sub>x</sub> plume?

7 MR. LUCAS: No. As I mentioned, it was more  
8 consistent with what I've seen with just a  
9 meteorological event, a rainstorm.

10 MR. ALVIDREZ: And is there a color  
11 characteristic associated with a NO<sub>x</sub> plume commonly  
12 noted.

13 MR. LUCAS: Typically with NO<sub>x</sub> or nitrates,  
14 you'll see a yellow or brown type of plume, if you were  
15 looking at a power plant stack or downstream from that.  
16 And on the drive up, I did not see stacks or plumes  
17 specifically on the drive.

18 MR. ALVIDREZ: That's all my questions.

19 MS. ORTH: All right.

20 Is there any reason not to excuse the Black &  
21 Veatch panel again?

22 No?

23 Thank you very much, Ms. Fischer and  
24 Mr. Lucas.

25 A couple of us need a break. But let me ask

1 before we do that if we can get to the closure of the  
2 evidentiary record, parties, presumably you've had an  
3 opportunity to look at the document Mr. Alvidrez handed  
4 me titled Comments of Public Service Company in Response  
5 to Public Comments Relating to Alleged Health Effects,  
6 clearly technical testimony in the form of rebuttal.

7 Were there objections to the admission of this  
8 packet?

9 MR. GRANTHAM: Madam Hearing Officer, I don't  
10 believe I've seen that.

11 MS. ORTH: All right.

12 Mr. Rose, have you seen it?

13 No. Okay.

14 It's titled Public Health Analysis of Air  
15 Emissions Impacts from the San Juan Generating Station.  
16 It was prepared by Gradient Corporation.

17 MR. GRANTHAM: Madam Hearing Officer, we have  
18 no objections.

19 MS. ORTH: All right. Thank you.

20 MR. CASCIANO: I have a question, Hearing  
21 Officer.

22 So this is being offered as public comment  
23 versus technical testimony?

24 MS. ORTH: No, sir. Member Casciano, this is  
25 technical testimony which is allowed to come in

1 notwithstanding the fact that it was not part of the  
2 notice of intent because it's in the form of rebuttal.  
3 And it appears to be proper rebuttal to my eyes. If  
4 Mr. Rose or Mr. Roybal wants to argue otherwise, I'll  
5 certainly hear their objection at this time.

6 MR. ROYBAL: San Juan has no objection.

7 MR. ROSE: I have no objection to it.

8 MS. ORTH: All right. Thank you.

9 In that case, it's admitted.

10 (Exhibit PNM A admitted into evidence.)

11 MS. ORTH: The Board may rely on -- on the  
12 document.

13 Is there any reason, then, not to close the  
14 evidentiary record?

15 No?

16 All right. Hearing -- hearing nothing, we  
17 will close the evidentiary record at this moment.

18 We will take a 10- to 15-minute break. When  
19 we return, we will have closing arguments from any party  
20 who wishes to offer it. That would be Mr. Alvidrez,  
21 Mr. Grantham, Mr. Rose or Mr. Roybal. And then the  
22 Board can move into deliberations.

23 Thank you.

24 Let's take a break.

25 (Proceedings in recess from 11:38 a.m. to

1 11:57 a.m.)

2 MS. ORTH: Let's come back from the break,  
3 please.

4 All right. We're coming back from the break  
5 in EIB 11-01. This is proposed revisions to the State  
6 Implementation Plan for regional haze.

7 The evidentiary record is closed. We will now  
8 have closing arguments from the parties.

9 Mr. Grantham, would you like to start?

10 And let me ask all counsel to come down here  
11 so we can hear you.

12 MR. GRANTHAM: Thank you, Madam Hearing  
13 Officer, members of the Board.

14 We've been in hearing for quite some time, so  
15 I will be brief and allow you to get to your  
16 deliberations. But I do have a few closing remarks.

17 First of all, I want to emphasize that the  
18 visibility is a valid concern. It's an important public  
19 welfare criterion. And it has been decided by Congress  
20 that visibility is an issue that needs to be addressed  
21 in Class I areas.

22 So the issue before you is not whether  
23 visibility is -- we're considering a balance against  
24 jobs or other considerations. This Board has to enact a  
25 State Implementation Plan to address visibility, or EPA

1 will do a federal plan.

2           However, visibility does require a balancing  
3 as it would any type of environmental regulation, and  
4 the criteria for that balancing are established by  
5 Congress in the Clean Air Act.

6           As Mr. Cline testified to, I think very  
7 accurately and eloquently, the criteria in particular  
8 for the BART determination are in the act, and they are  
9 the cost of compliance, the remaining useful life of the  
10 source, the energy and nonair impacts, and the existing  
11 pollution control technology, and the degree of  
12 visibility improvement.

13           The act -- the Clean Air Act and case law  
14 under the visibility provisions of the act establish  
15 that the state has wide discretion in making a  
16 determination for the BART determination. Mr. Cline  
17 also testified to that.

18           And I would add that -- he talked about the  
19 provisions, the BART guidelines that were established in  
20 1980 and are reasonably -- considerable visibility  
21 impairment provisions, as a more accurate reflection or  
22 interpretation of the act, because it was more  
23 contemporaneous with the 1977 amendments.

24           However, I would just add that even under the  
25 2005 guidelines that we are operating under here today

1 for making BART determinations, the guidelines provide a  
2 methodology that the state has to follow, and they give  
3 the state some guidance on how to weigh -- not -- on how  
4 to consider the factors.

5 But ultimately, it comes down to a decision.  
6 And the 2005 guidelines that we operate under don't  
7 provide and they can't provide a quantitative way to  
8 reach that ultimate decision.

9 I think the exchange between Member Ryan and  
10 the technical witnesses really kind of brought that into  
11 focus, that what we're looking at here as far as the  
12 BART determination is -- really comes down to two  
13 options. One would give but a quarter of a deciview  
14 improvement for about \$75 million, and the other a  
15 larger deciview improvement for \$700 million.

16 And the guidelines can't tell you how to  
17 balance those two. There's no formula you can plug  
18 those into.

19 It's the Department's position that either of  
20 those would -- either SCR or SNCR is within the state's  
21 discretion to determine. What the -- the tipping point  
22 for our analysis was the ratepayer cost. The cost is a  
23 consideration. That is one of the factors established  
24 by the act.

25 Benefits -- the health benefits are not a

1 factor in making a BART determination, presumably  
2 because Congress feel that there are other provisions to  
3 address health affects, such as the National Ambient Air  
4 Quality Standards.

5 So in determining whether the state should  
6 exercise its discretion and require more than the  
7 presumptive standards, which SNCR meets, the ratepayer  
8 cost was -- was the tipping point, and that is why the  
9 state's BART determination ended up where it is.

10 I'd just also like to remind the Board that  
11 there -- the BART determination is not the only  
12 provision of this rulemaking. There are also revisions  
13 to Section 309, the 2003 SIP and technical  
14 demonstrations done to satisfy the requirements of  
15 309(g) to extend the 309 program to other Class I areas,  
16 and there is substantial evidence in the record  
17 supporting that.

18 So I would respectfully request the Board to  
19 approve NMED's proposed SIP for 309 and 309(g), and also  
20 just point out that in the -- in our pleadings, there is  
21 a proposed statement of reasons at Exhibit 19, which the  
22 Board can use to document and memorialize its decision  
23 should it reach that decision here today.

24 Thank you.

25 MS. ORTH: Thank you, Mr. Grantham.



1           Mr. Alvidrez?

2           MR. ALVIDREZ: Yes, Madam Hearing Examiner,  
3           Madam Chair, members of the Board.

4           I'd like to first open by thanking you very  
5           much for your time and your consideration in this case.  
6           We understand that you are a volunteer board, that  
7           you're not paid to tend to this very important business,  
8           and that it is very difficult, it is very  
9           time-consuming. And I think it's very commendable to  
10          have all of you here during this entire hearing to hear  
11          this very important case.

12          And so please accept my thanks on behalf of  
13          Public Service Company of New Mexico for your hard work  
14          and your dedication.

15          I want to talk a little bit about, of course,  
16          the BART determination for San Juan Generating Station,  
17          and I hope that with the testimony that has been  
18          provided and the comments that have been provided by a  
19          number of people, that the Board has a solid  
20          understanding of what we're dealing with and what the  
21          issues are for consideration.

22          And we've provided information about  
23          visibility impacts, about what the BART process is, and  
24          have, you know, illustrated or attempted to illustrate  
25          with these exhibits about what an investment of a

1 billion dollars -- what the difference is.

2 And while we certainly don't want to minimize  
3 the importance of visibility, say that it's not  
4 something that needs to be considered by the Board -- it  
5 absolutely does -- we do think that you do have to look  
6 at the cost as factor.

7 And when you analyze the tremendous costs in  
8 terms of impacts to ratepayers, in terms of potential  
9 impacts to the Four Corners area, we think, as the New  
10 Mexico Environment Department believes, that the balance  
11 tips in favor of something less than SCR, that is that  
12 SNCR is the correct answer for New Mexico.

13 And in making this determination, we are, of  
14 course, filling a very important statutory duty, both  
15 under the Clean Air Act and under our own New Mexico Air  
16 Quality Control Act.

17 And, you know, there were a lot of questions  
18 about, well, with SNCR, it costs \$77 million, and we  
19 only get an imperceptible improvement in visibility. So  
20 why should we cause the ratepayers to even pay that  
21 amount?

22 Well, there's a very important reason why, and  
23 that is that that SNCR technology gets you to the  
24 presumptive limit. The presumptive limit has legal  
25 significance in terms of how the EPA has to judge the

1 State Implementation Plan. The EPA set that standard  
2 and said, "This is what we expect facilities to meet."

3 And with the SNCR, we can meet it, San Juan  
4 will be able to meet it, And this Board will have  
5 satisfied its legal requirements in terms of the types  
6 of controls, NO<sub>x</sub> controls, that are required for San  
7 Juan.

8 That's why it's worth the \$77 million to spend  
9 to get, even though it's a small improvement, an  
10 improvement. We also note that it will also reduce NO<sub>x</sub>  
11 emissions, which is a good thing. It's not an  
12 insignificant amount. It's almost 5,000 tons per year.

13 There's been a lot of discussion about what's  
14 happening around the country in terms of EPA and their  
15 involvement in SCR technology, and we did provide the  
16 Board, again attached to Mr. Themig's testimony in  
17 PJT-2, Attachment A, a list that was current, at least  
18 as of April 4th, of various power plants around the  
19 country, and the proposed BART determinations for the  
20 various plants.

21 So I hope you'll take a little bit of time to  
22 look at it, because you will see that while there are a  
23 number of plants for which SCR has been determined or  
24 proposed is appropriate, there are many, many more  
25 plants where other technologies, including SCR, SNCR,

1 have been determined appropriate, and even many, many  
2 more where the combustion controls as we've talked  
3 about, the existing controls that are in effect at San  
4 Juan, have been proposed as approved.

5 Now, in many cases, it still remains to be  
6 seen what's going to happen, but I think it's important  
7 that if you look at the EPA's own guidelines, their own  
8 guidance in this area, here is what they say about SCR.

9 These guidelines were published in their 2005  
10 preamble, and it says, "Although states may in specific  
11 cases find that the use of SCR is appropriate, we have  
12 not determined that SCR is generally cost effective for  
13 BART across unit times."

14 So using the EPA's own criteria, SCR is not  
15 something that they presume is going to be the  
16 appropriate technology. In fact, if you read the EPA  
17 BART guidelines, they believe that combustion controls  
18 are appropriate. That is the low NO<sub>x</sub> burners over air  
19 that's in effect at San Juan currently.

20 When we're talking about SCR and SNCR, we're  
21 talking about postcombustion controls. That's, you  
22 know, after the coal has been combusted and it's going  
23 out the -- the exhaust, if you will.

24 So in closing, we believe that the proposal  
25 that has been submitted by the New Mexico Environment

1 Department is a very comprehensive, very thoughtful and  
2 certainly very defensible proposal. It's appropriate  
3 for the State of New Mexico, and it reaches the  
4 appropriate balance of the various interests that this  
5 Board is to consider in adopting a regional haze State  
6 Implementation Plan.

7 And with that, we would urge the Board's  
8 approval of the New Mexico Environment Department's SIP  
9 as proposed.

10 Thank you.

11 MS. ORTH: Thank you, Mr. Alvidrez.

12 Mr. Roybal, do you have closing comments?

13 MR. ROYBAL: Very briefly, Madam Hearing  
14 Officer, members of the Board.

15 Again, thank you for your efforts in coming to  
16 Farmington, San Juan County.

17 We hope that what we offered this morning  
18 through Mr. Cline's testimony and his analysis of the  
19 history and substance of the Clean Air Act and its  
20 regulations addressing regional haze will give the Board  
21 comfort that its proposed action, the adoption of the  
22 NMED proposal, is not only appropriate and in keeping  
23 with the provisions and requirements of the act, but is  
24 the right decision to make.

25 The interchange with Mr. Cline and the Board,

1 we thought, was a very positive demonstration of the  
2 diligence and interest of the -- of the Board.

3 And I just report to you that Mr. Cline, as  
4 someone who has been working in this area for many, many  
5 years and who cares about the substance of the law, and  
6 in this area specifically -- he commends the Board for  
7 its questions and its engagement in this issue, and he  
8 again has worked a long time in this area, and he's  
9 always happy when he can participate in an effort like  
10 this one, and see that the decision-making process where  
11 the state bodies that have to work in this very  
12 technical area is being implemented in this way.

13 So I think hopefully, again, that interchange  
14 with Mr. Cline will give you some comfort that the Board  
15 will be taking an appropriate action.

16 And the second -- our second witness hopefully  
17 will give you some indication of the impact of the  
18 Board's decision on the community here and on the  
19 specific people. Mr. Benally worked for his whole  
20 career with our company and in support of this power  
21 plant.

22 Lucinda Bennalley, the representative of one  
23 of the chapters that is most closely impacted by the  
24 mine and power plant, should give you again an  
25 indication of how your decision will impact our

1 community.

2 And we thank you for your efforts.

3 Close with that.

4 MS. ORTH: Thank you, Mr. Roybal.

5 Mr. Rose, do you have anything to add?

6 MR. ROSE: Nothing to add, Madam Hearing  
7 Officer.

8 MS. ORTH: Thank you.

9 Those are the closing arguments, then, Board.

10 And I will turn the imaginary gavel back to  
11 the chair.

12 MS. PEACOCK: Thank you.

13 And thank you everyone for providing testimony  
14 and comments today. We really appreciate it, and we've  
15 learned a lot in the last couple of days.

16 So we're going to move into deliberations on  
17 11-01, and does anyone want to start?

18 MS. RYAN: I'm getting several looks from the  
19 Board, so -- I don't know whether that's because they  
20 want to get -- they know I'm talkative and want me to  
21 get it out of the way or because they legitimately want  
22 to hear what I have to say.

23 So I'm going to go with the later -- with the  
24 latter.

25 I would just like to state that for me

1 personally, and I know probably for other members of our  
2 Board, that there's been the rhetoric used the past  
3 couple days of that this is a moral issue. And I happen  
4 to completely agree with that. It is a moral issue. It  
5 is a moral issue.

6 The public health of our state is a moral  
7 issue. The economic impact, the loss of jobs are an  
8 economic issue. Our environment -- the state of our  
9 environment and needing to protect what I believe God  
10 has given us is absolutely a moral issue. And that is  
11 the reason that I agreed to be a member of this Board.

12 So I do appreciate those comments and take  
13 them very personally. So thank you to those of you who  
14 have raised those.

15 But as a member of the Board, I am -- I have  
16 to make my decisions in accordance with the guidelines  
17 set forth in the Air Quality Control Act more  
18 specifically, and then also within the guidelines set  
19 forth in BART.

20 And to just recap, our guidelines and  
21 implementation of the SIP are under the Air Quality  
22 Control Act and not the Environmental Improvement Act,  
23 and those guidelines are separate, and they do put on  
24 this Board factors that we have to take into  
25 consideration when we're making a decision to implement



1 regulations under the Air Quality Control Act.

2 And those are character and degree of injury  
3 to or interference with health, welfare, visibility and  
4 property; two, the public interest, including the social  
5 and economic value of the sources and subjects of air  
6 contaminants; and, three, technical practicability and  
7 economic reasonableness of reducing or eliminating air  
8 contaminants from the sources involved; and previous  
9 experience with equipment and methods available to  
10 control the air contaminants involved.

11 We have heard -- and that -- and taking that  
12 into consideration of the five factors that we must  
13 weigh under BART, public health is not one of them, and  
14 we do not have, you know, any technical testimony --  
15 because of that, we do not have any technical testimony  
16 or evidence to consider with regard to the impact of  
17 that.

18 However, I do anticipate that in other  
19 hearings and in other things that our Environmental  
20 Department does, that we will be taking those into very  
21 careful consideration.

22 But today, we are particularly focused on  
23 visibility and the regional haze and specifically in  
24 this area of the state, and also the economic  
25 reasonableness and impact to the community, as well as

1 the value of the resources in this community.

2 So all of that considered, members of the  
3 Board, and those present today, my vote would be to  
4 support the NMED's and PNM's proposal for the State  
5 Implementation Plan.

6 And I would like to recognize the efforts by  
7 the New Mexico Environmental Department to do its best  
8 to really focus on what is best for our state and not  
9 just let the federal government come in and tell us what  
10 to do.

11 And I really appreciate all of the hard work  
12 that you have done to do what is best for us and to keep  
13 local -- what affects us locally local.

14 And as well as PNM for its efforts previously  
15 spending the 320 million to improve its -- its  
16 facilities and its output and to determine your own  
17 destiny on how you want to be a member of our society  
18 and productive and also your steps to even further that  
19 with the SIP.

20 So thank you to PNM and the coal plant for  
21 continuing to take steps to move that forward.

22 So that will be my vote today.

23 MS. PEACOCK: Any others?

24 MR. BRYCE: I'll go ahead and give my  
25 thoughts.

1           We've heard from a lot of people in public  
2 comment and a lot of good information from those who are  
3 also affected through the business world, and we've had  
4 some people suggest that we should do less than SNCR,  
5 that even the \$77 million is -- for a little bit of  
6 visibility doesn't seem like a wise investment.

7           We've got others saying they'd like to do the  
8 maximum because they just want the cleanest air, they'd  
9 love to have natural visibility today.

10          The hybrid, which is right in the middle,  
11 proved to be not cost effective to invest that kind of  
12 money for not that much more significant results than  
13 the SNCR, it didn't seem very wise.

14          So it really did boil down to SNCR versus SCR,  
15 which is where we started, of course.

16          The whole SIP -- you know, typically the Board  
17 will spend a lot of time going through every single word  
18 of the SIP. Seeing that we had a foot stack of papers,  
19 we didn't spend probably quite as much time as all the  
20 verbiage of the plan.

21          But it's obvious that we have to submit a SIP.  
22 You know, that's our obligation. It should have  
23 happened prior to now. To not approve it, have the FIP  
24 go into place, I think, is a little bit negligent on our  
25 part, to not do what the state should be doing, and this

1     should be in our own control.

2             It's my thought that based on the five factors  
3     of BART -- you know, visibility is great. I would love  
4     to see pristine, clear air every time I walked on top of  
5     a mountain or looked around and see the vistas.

6             You know, the \$1 billion investment to get us  
7     slightly improved air -- you know, I wish -- I wish it  
8     was crystal clear, and, you know, it was just the way we  
9     imagined it on the best day that we've ever been  
10    outdoors. But to spend a billion dollars to get that  
11    kind of view, the improvement is not significant.

12            To me, it seems obvious that we need to meet  
13    the EPA threshold, we have to make some investment. A  
14    \$77 million investment is a much wiser investment in my  
15    view than spending 10 times that amount.

16            I also would support the SIP and the SNCR  
17    technology.

18            MS. PEACOCK: Anyone else?

19            MR. FULFER: I think you have to have a --  
20    probably meetings like this to bring technology and  
21    compliance to the forefront, especially technology, that  
22    brings out what's available out there and keeps the  
23    search for better technology, and I think we're going to  
24    see that more and more for coal over the next few years.

25            The EPA system, I feel like, lacks

1 all-encompassing and state-specific items. I think it's  
2 unreasonable. Some of the testimony that was talked  
3 about today as being marginal or excellence, I think the  
4 excellence it's not obtained in one slice or one silver  
5 bullet. I think it's something that's grown over time.

6 And so I think you have to -- you have to have  
7 something in place and being working toward that all the  
8 time. And I think the state does that in their -- in  
9 their attempt here.

10 I think with New Mexico being one of the  
11 poorest states in the state overall economy that we're  
12 in, I think this is really -- the EPA method is  
13 economically burdensome.

14 I think -- I think the state's plan may be  
15 somewhat even burdensome in the fact that this company  
16 has invested over \$320 million and not considering all  
17 the facts of what they've put in it at this time as far  
18 as getting their investment. They've only had that  
19 investment in a couple of years.

20 And how do you keep adding this on every two  
21 years or what's -- so I feel like it -- there should be  
22 at least like a five-year time span in instituting  
23 another burden. I think that will create time for the  
24 ratepayers to -- to -- they don't feel that burden. It  
25 will give technology a time to catch up.

1           I think we're going to see coal technology --  
2     like I said a while ago, it's coming along fast -- at a  
3     faster clip than we've seen in many years. The  
4     cost/benefit ratio of the EPA plan, I feel like, is out  
5     of balance. The economic cost to the state, the cities  
6     and the counties is a severe burden to the people.

7           The health benefits, I think you have to take  
8     those somewhat into consideration in thinking about it,  
9     but I think electricity brings a lot of health benefits  
10    to our modern times. The economic stimulus that it  
11    brings, I think, brings our health up to another level.  
12    I think the poorer our nation is, the worse the health  
13    benefits are.

14           And so our nation's dependent on coal. I  
15    think without it it's -- it would create a poorer  
16    nation. So I really feel like the benefits to health to  
17    having coal is -- far outweighs the not having.

18           I do support the state's plan. I think the  
19    plan needs to give some time for good planning and  
20    engineering. And I think it should be required to maybe  
21    give it some time to -- for that engineering planning to  
22    get -- before they have to institute that. And I do  
23    support the plan.

24           MS. PEACOCK: Anyone else?

25           MR. CASCIANO: Yeah. I have some comments.

1           First, I wanted to thank the technical  
2 witnesses that came forward. There was a tremendous  
3 volume of information, both regulatory and  
4 technology-wise, that I thought the technical witnesses  
5 did a very good job of sorting through that and  
6 presenting summaries to the Board and asking -- or  
7 answering questions.

8           I will be voting in favor of the state's  
9 implementation plan for -- for several reasons. I was  
10 concerned with the EPA questions to the state's plan,  
11 but I was very impressed with the responses that the  
12 state provided to EPA and think they addressed the list  
13 of 20 or so questions that EPA had. So that helped me  
14 in coming to this conclusion.

15           I would note that most of the public comment  
16 was in favor of the state's plan. A great majority  
17 today, less of a majority yesterday, but even the  
18 nontechnical comments yesterday were more in favor of  
19 the state's plan.

20           And those who spoke against the plan or for  
21 the EPA proposal, many of those were in favor of clean  
22 technology and energy alternatives, and I think it's --  
23 it's our job to balance, and if we put too much money  
24 into end of pipe control for pollutants that have  
25 marginal benefits when it comes to visibility or public

1 health improvements, then we lose out with that money  
2 that we could apply to other more productive uses.

3 I was moved today by the comments from the  
4 Native American community. I think it's very important  
5 for us to remember, as Board Member Fulfer said, that  
6 health outcomes in the US are the primary predictor or  
7 the biggest factor in predicting negative health  
8 income -- or outcomes. It is income level and  
9 socioeconomic status.

10 So if you are a poor person in the United  
11 States, you -- you have about twice the chance of  
12 getting across a multitude of common diseases and causes  
13 of death -- of getting those than if you are in a poor  
14 socioeconomic strata.

15 So I think it's important that we keep  
16 businesses healthy and alive and -- and that we be  
17 sensitive to workers in a community.

18 So with that, I'll conclude my remarks by also  
19 kind of giving my opinion on EPA's best available  
20 control technology, in this case retrofit technology. I  
21 think it's important that we remember -- and Mr. Cline  
22 talked about this a little bit. I think the best really  
23 in the regulations means the best for the situation at  
24 hand. It doesn't mean the theoretical best or the  
25 absolute best.



1           EPA and the environmental rules really want us  
2 to consider a number of factors and what is best kind of  
3 considering everything for the particular situation.

4           Thank you.

5           MS. PEACOCK: Anyone else?

6           MR. VOLKERDING: I'll go.

7           Being from the Farmington area, I was happy to  
8 hear, you know, from the public this morning, and as  
9 Mr. Casciano pointed out, overwhelmingly the people in  
10 this area up here today are in support of the New  
11 Mexico's plan.

12           And I think it's -- something that, you know,  
13 the Board has to consider is that, you know, we're --  
14 we've heard testimony and public comment in terms of  
15 alternative energy and green, and we've had people talk  
16 about global warming and those kinds of things. And  
17 those are all very important issues, but that's not  
18 actually what this hearing is about.

19           This hearing is about whether this Board  
20 approves the State Implementation Plan as presented.  
21 And so I think it's important that we stay focused in  
22 terms of what is before us.

23           As has been pointed out, you know, Congress,  
24 when it came up with these rules, outlined what a state  
25 should do in developing a SIP, and the New Mexico's

1 proposal has done that.

2 And in response to the people that are  
3 concerned about public health, I think Mr. Alvidrez  
4 brought up an excellent point, there are a whole bunch  
5 of other rules that come into play, and this is -- this  
6 decision and this SIP is not done in a vacuum. There  
7 are the National Ambient Air Quality Standards, there's  
8 New Mexico air quality standards, there's other  
9 performance standards for different types of equipment.

10 And so whatever decision the Board makes does  
11 not invalidate any of those aspects that are out there  
12 to also help and protect public health.

13 And so staying on point in terms of what is  
14 before this Board, the state's SIP plan has met all of  
15 the criteria that Congress laid out in the Clean Air  
16 Act, it does reduce emissions from the PNM plant, and so  
17 I also would be in support of the New Mexico plan.

18 MR. MORROW: Oh, I -- they've said everything  
19 that I was going to say, so no sense taking up anybody  
20 else's time.

21 But I am in support of what we're doing. I  
22 appreciate hearing from both sides, we do need to hear  
23 from both sides. But I think the decision that we make  
24 today and the guidance we've had has been very good.

25 And that's all I'll say.

1 MS. PEACOCK: Again, and I'll wrap it up.

2 I'm very impressed with the Environment  
3 Department's work on this, with PNM's work, and the  
4 engineers and the modeling that went into this, and also  
5 how you -- you've played with EPA and responding to them  
6 and getting them involved, and it just seems to be a  
7 very complete process to me, and it's a process that  
8 does belong in the state.

9 And that's why, as well, I'm going to be  
10 voting for the SIP.

11 So we've heard from everybody.

12 Can I -- will somebody make a motion?

13 MR. MORROW: I so move.

14 MS. RYAN: Second.

15 MS. PEACOCK: All in favor.

16 (Simultaneous responses.)

17 MS. PEACOCK: Okay. Unanimous to approve the  
18 SIP.

19 And because of what -- upon approval of the  
20 SIP, we now move -- need to move into 11-02 and have a  
21 hearing on that.

22 MS. ORTH: Yes, Madam Chair.

23 MS. PEACOCK: So I'll turn it over to  
24 Ms. Orth.

25 (Proceedings adjourned at 12:33 p.m.)

1 STATE OF NEW MEXICO )  
2 ) ss.  
3 COUNTY OF BERNALILLO )  
4  
5

6 I, CHERYL ARREGUIN, the officer before whom the  
7 foregoing proceeding was taken, do hereby certify that  
8 the witnesses whose testimony appears in the foregoing  
9 transcript were duly sworn or affirmed; that I  
10 personally recorded the testimony by machine shorthand;  
11 that said transcript is a true record of the testimony  
12 given by said witnesses; that I am neither attorney nor  
13 counsel for, nor related to or employed by any of the  
14 parties to the action in which this proceeding is taken,  
15 and that I am not a relative or employee of any attorney  
16 or counsel employed by the parties hereto or financially  
17 interested in the action.

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